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ABSTRACT

This document describes the resource allocation and targeting provisions of the Carl D. Perkins Vocational Act of 1984 and identifies and evaluates some policy options. An introduction outlines the aims and scope of the report. Section 2 describes grants for handicapped and disadvantaged vocational students, addressing the evolution of federal aid for such students, the intended uses and effects of such aid, and the provisions that allocate and target funds. Section 3 explains how the terms "handicapped," "disadvantaged," and "vocational student" are defined in the legislation. Also included are the definition of permitted uses of funds, the implications for resource allocation and targeting, an assessment of the specific matching provisions, and a summary of findings and policy options. Section 4 covers the legislation's supplemental services and excess cost provisions. Section 5 explains the requirement for matching funds. Section 6 takes up the "supplement, not supplant," requirement of the legislation, and includes approaches to making nonsupplanting more effective. Section 7 describes the service mandates and equal access provisions of the legislation. Also included is an explanation of the roles of Congress, the Department of Education, and the Office of Vocational and Adult Education. Section 8 describes the legislation's mechanisms for distributing funds between and within states. Section 9 describes the set of targeting provisions as a whole. Section 10, the longest in the report, contains a detailed analysis of the Perkins grants for program improvement. A 27-item reference list is included. (CML)

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FEDERAL GOALS AND POLICY INSTRUMENTS IN VOCATIONAL EDUCATION: AN ASSESSMENT OF THE RESOURCE ALLOCATION AND TARGETING PROVISIONS OF THE CARL D. PERKINS VOCATIONAL EDUCATION ACT OF 1984

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PREFACE

This report has been prepared by Dr. Stephen M. Barro of SMB Economic Research, Inc. for the National Assessment of Vocational Education (NAVE). It was funded through a subcontract from Decision Resource Corporation (DRC) under DRC's prime contract 300-87-0011 with the U. S. Department of Education. Its purposes are to review and assess the resource allocation and targeting provisions of the Carl D. Perkins Vocational Education Act of 1984 and, where appropriate, to identify and evaluate promising policy options. The report offers conceptual and logical analyses of the designs of two major types of grants supported under the Perkins Act: the grants for handicapped and disadvantaged vocational students authorized under Title IIA of the Act and the grants for program improvement, innovation, and expansion authorized under Title IIB. As such, it complements the surveys and case-study research that NAVE has undertaken of implementation of the Perkins Act at the state and local levels.

The author wishes to express his appreciation to Dr. John G. Wirt, Director of the National Assessment, for his detailed comments on an earlier draft of the report and to Dr. Lana D. Muraskin for her advice on numerous analytical and policy issues. He is also grateful to the fifteen individuals who agreed to be interviewed for this study and who provided valuable insights regarding the origins, interpretations, and implications of the Perkins provisions and the arguments for and against various alternatives. Their anonymity has been preserved in the report, but they include present and former officials of the Office of Vocational and Adult Education (OVAE), which administers the Perkins Act; present and former officials of other offices within the U.S. Department of Education; present and former Congressional staff members who were involved in drafting the Perkins legislation; interest group representatives; and scholars who have studied federal vocational education policy.

EXECUTIVE SUMMARY

Under the Carl D. Perkins Vocational Education Act of 1984 (P.L. 98-524), the Office of Vocational and Adult Education (OVAE) of the Department of Education (ED) now distributes over $900 million per year in federal grants for vocational education. These grants are the principal tools available for accomplishing the federal government's main goals in vocational education, which Congress has defined as (1) improving access to, or opportunities in, vocational education for certain underserved or special-need populations, and (2) raising the quality of vocational programs and helping to make good programs more widely available. In pursuit of the first goal, the Act provides grants to support vocational education services for the handicapped, the disadvantaged, and other "target groups." In furtherance of the second, it provides grants for program improvement, innovation, and expansion activities. These grants are distributed first to states and then to local education agencies (LEAs) and postsecondary institutions within each state, to be used for the designated purposes.

A prerequisite for achieving the aforesaid goals is that grants must be *targeted* properly--that is, federal funds must be directed to the specified activities or beneficiaries and, more precisely, must translate into *net additions* to the resources that would otherwise have been available for the stated purposes. This means that the grants intended to expand vocational education opportunities for special-need students must add to the total resources--federal, state, and local--that would otherwise have been provided to serve those students, and that program improvement grants must add to the total outlays that would otherwise have been forthcoming to support program improvement efforts in vocational education. Only if, and to the extent that, federal aid is "fiscally additive" is it likely that the purposes of the Act will be accomplished.

But long experience with categorical grant programs in education (and in other fields) has shown that proper targeting of federal aid cannot be taken for granted. State and local priorities do not necessarily mirror federal priorities, and the purposes for which Congress earmarks federal funds are often not the ones on which the grantees themselves would choose to spend marginal dollars. Where priorities diverge and circumstances permit, grantees are likely to spend federal funds to replace (supplant) rather than augment state and local outlays for the federally designated target groups or activities. This "frees up" nonfederal funds for other purposes, effectively converting the nominally categorical federal grants into general aid. Such fiscal substitution is particularly likely in vocational education because federal aid constitutes only a small fraction--perhaps 6 percent--of total vocational education spending, making it easy to reallocate nonfederal funds in response to the availability of federal dollars, and because federal aid for vocational education has flowed for many years and become a regular source of support for ongoing programs. Under these conditions, merely earmarking federal funds for certain purposes is insufficient to produce the desired fiscal and allocative effects.

Recognizing that there is this targeting or additivity problem, Congress has attached to Perkins grants certain requirements intended to ensure that federal aid is used to advance federal purposes and not merely to augment the general budgets of states, LEAs, and postsecondary institutions. These include, for example, the requirements that federal funds must "supplement, not supplant" funds from state and local sources, that grants for the handicapped and disadvantaged may be used only to pay for the "excess costs" of "supplemental services" for such students, that the same grants must be distributed within states according to federally specified formulas, that program improvement grants may not be used to "maintain existing services," and that aid recipients must match federal grants with equal amounts of nonfederal funds. The roles of these provisions are unappreciated but crucial: the likelihood that federal aid will affect vocational education as Congress intended depends strongly on how well they work in directing Perkins funds to the intended uses.

The purposes of this study are, first, to assess the existing resource allocation and targeting provisions in the Perkins Act and, second, where problems or deficiencies are identified, to present promising solutions or policy options. The central question in the assessment is, as indicated above, whether the Perkins provisions are likely to be effective in ensuring that federal funds are used additively for the purposes stipulated by Congress. In addition, the study addresses such related questions as whether Perkins funds are distributed rationally and equitably, whether the federal requirements are necessary or unduly burdensome, and whether the incentives created by the federal targeting rules may have adverse side effects on vocational programs. The options considered range from minor revisions of existing statutory or regulatory provisions to broader changes in strategy and program design (limited, however, to alternatives compatible with the present federal goals and the general framework of the Perkins Act). The study focuses on two major types of grants provided under the Act: grants for the handicapped and disadvantaged and grants for program improvement. Together, these account for 75 percent of all Perkins basic grants to states.

This is an assessment of the designs of the federal vocational education aid programs rather than an evaluation of program outcomes. The analyses presented are logical, conceptual, and theoretical rather than empirical. They are based primarily on examination of pertinent documents--the Perkins Act itself, the OVAE/ED[1] regulations and accompanying interpretations and guidelines, related OVAE and ED materials, Congressional committee reports, prior analyses of the Perkins Act and its predecessors, studies of vocational education and federal vocational education policy, and general literature on the designs and effects of federal grants. In addition, the report reflects information obtained from approximately 15 interviews with current and former OVAE and ED officials, Congressional staff members, interest group representatives, and policy analysts.

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[1] The term OVAE/ED is used throughout this report in instances where it is not apparent whether a particular rule, interpretation, or policy position is attributable to OVAE itself or to some other office or entity within the Education Department.

The principal limitation of this study is inherent in its nature: a conceptual, nonempirical inquiry can determine what the federal rules allow, what they require, what incentives they create, and what responses are likely, but it cannot establish how grantees actually behave. Thus, while evidence is presented that the extant rules do not ensure or promote proper targeting of aid, this is not same as proving that aid is actually misused. Other significant limitations are that the analysis covers only the federal requirements, not any additional requirements that states may have imposed, and that it examines the Perkins grants but not other federal (or state) grants aid for related purposes. In these respects, it provides a less-than-complete picture of influences on the local providers of vocational education services.

PERKINS GRANTS FOR HANDICAPPED AND DISADVANTAGED VOCATIONAL STUDENTS

Enhancing services for handicapped and disadvantaged vocational students is the most clearly defined resource allocation objective of the Perkins Act and the one that Congress has backed up most extensively with specific targeting provisions. The pertinent statutory and regulatory requirements include the following:

- Definitions of target groups and permitted uses of federal funds,
- Requirements that Perkins grants be used only to pay the federal share of supplemental services provided to, or excess costs incurred for, handicapped and disadvantaged enrollees in vocational programs,
- A requirement for 50-50 state-local matching of the federal contribution to the excess costs of programs,
- A requirement that Perkins grants aid must supplement, not supplant the state and local funds that would otherwise have been available to support the federally aided activities,
- A requirement that handicapped and disadvantaged students must be afforded equal access to the full range of vocational programs,
- A set of service mandates, requiring LEAs to provide certain specified services to all handicapped and disadvantaged vocational students,

- A fund distribution mechanism, including provisions for apportioning aid among states, setting aside certain percentages of each state's allotment for the handicapped and disadvantaged, and distributing the latter among LEAs and postsecondary institutions within each state.

This report examines each provision in detail: what it is intended to accomplish, whether it is well-conceived and appropriately designed, how it has been interpreted and implemented, and, where necessary, how it might be altered or improved.

Definitions of Target Groups and Permitted Uses of Funds

Before assessing the other targeting provisions one must consider the targets themselves. Who are the students, and which are the activities, for which the Perkins handicapped and disadvantaged set-aside grants are to be used? These matters are addressed in some detail in both the statute and the regulations, but not with particularly satisfactory results.

The target groups are, of course, handicapped and disadvantaged vocational students. The definition of "handicapped" is a standard one derived from the federal Education of the Handicapped Act, but the definition of "disadvantaged" is peculiar to the vocational education program. According to the latter, the term "disadvantaged" covers students who (a) qualify under any one of five criteria of economic disadvantage, (b) satisfy any one of three criteria of general academic disadvantage, or (c) are migrants, limited-English proficient, dropouts, or potential dropouts, and who "require special assistance to succeed in vocational education programs." The term "vocational student" is not defined, leaving it up to each state to decide how broadly or narrowly to construe it.

A major problem with these definitions (especially the definition of disadvantaged) is that they are too broad and elastic either to convey clearly to grantees which students are to be served or to ensure that the benefits of federal aid accrue to the beneficiaries Congress had in mind. The definition of "disadvantaged" is expansive enough to embrace a majority of all high school vocational enrollees--too large a category to constitute, in any meaningful sense, a target group. The term "vocational student" can be stretched to cover the vast majority of secondary and postsecondary enrollees (i.e., anyone who enrolls in even a single vocational course), not just students enrolled in serious programs of occupational training.

The effects of this definitional looseness are exacerbated by the omission from the Perkins framework of the principles that (1) funds should be concentrated on few enough students to make a significant educational difference for participants, and (2) priority should be given to students "in greatest need" for assistance. Without such provisions, services may flow to relatively low-priority recipients, and there are likely to be major disparities among states, LEAs, schools, and programs in the numbers and kinds of students who are served with federal aid and in the amounts expended per participating student.

There are also certain more basic conceptual problems with the three types of criteria--economic disadvantage, academic disadvantage, and "need for special assistance to succeed in vocational education"--stipulated for identifying disadvantaged students. The rationale for including students on the basis of individual economic disadvantage (poverty) is unclear and the relevance of general academic disadvantage is questionable, since neither criterion necessarily implies diminished capacity to master vocational skills. The stipulation that participants must "require special assistance to succeed" is particularly troublesome, both because it can lead to perverse selections of beneficiaries and because it seems inconsistent with giving special-need students access to higher-level vocational programs than they would have been able to enroll in otherwise.

Because the target-group definitions were formulated mainly with LEAs and secondary schools in mind, they do not apply well to postsecondary students and institutions. There is confusion over which definitions of "handicapped," "economically disadvantaged," and "academically disadvantaged" are supposed to be used at the postsecondary level.

There are multiple options for altering the definition of the disadvantaged target group. One approach is to tighten the criteria of economic and academic disadvantage--for instance, by dropping some of the vaguer criteria (e.g., being a "potential dropout"), lowering the academic performance thresholds, and specifying preferred indicators of economic and academic disadvantage for use at the secondary and postsecondary levels rather than letting each state choose its own. Another option (applicable to the handicapped as well) is to tighten the definition of vocational student, perhaps by limiting the category to vocational majors or concentrators and/or enrollees in organized programs leading to certification in occupational fields. A third option is to introduce a concentration rule and the principle of serving those in greatest need first. All of the above are complementary, and adopting any or all would tend to focus scarce federal funds on a better-defined and more limited set of beneficiaries.

Among the options that involve more fundamental changes in the definition of the disadvantaged target group are dropping individual economic disadvantage as a criterion or, to the contrary, requiring that students have both low incomes and educational problems to be eligible for federally funded services. Another such option is to drop the stipulation that those served must "require special assistance to succeed in vocational education" in favor of a more specific, less subjective criterion of educational need. Eligible students might be defined, for example, as those lacking adequate preparation to perform satisfactorily in high-quality vocational programs or in the vocational programs of their choice. A more radical option is to shift from targeting individual students to targeting low-income schools. The latter would tend to channel federal funds to places where access to high-quality vocational programs is limited, while allowing individual participants to be selected on the basis of pertinent educational criteria.

As to permitted uses of funds, the federal rules are neutral with respect to both the types of resources or services to be provided and the types of vocational programs to be aided with Perkins handicapped and disadvantaged set-aside funds. Virtually anything that can be labeled vocational education, even including "related basic skills instruction" is an eligible activity. This neutrality is a matter of concern, first, because it is not clear that all permitted uses are equally desirable from the federal perspective and, second, because grantees face certain incentives to favor ancillary services and/or basic skills instruction over vocational instruction. Spending on basic skills instruction, in particular, is likely to involve supplanting and to divert resources away from improvement of vocational education per se. The lack of any provision pertaining to the quality of federally aided programs is also troubling, particularly considering that "improved access to high quality programs" is a stated program goal. Among the options for dealing with these concerns are limiting the fraction of federal aid that can be spent for activities other than vocational instruction, modifying other federal requirements to eliminate undesirable incentives, and establishing minimum quality standards for programs to be supported with Perkins funds.

The Supplemental Services and Excess Cost Requirements

The statute says that Perkins handicapped and disadvantaged set-aside funds may be used only to pay the federal share (50 percent) of the costs of supplemental services for target-group members or, where target-group members are educated separately, of costs that exceed the average per-student outlays in comparable programs for regular students. In the absence of an operational nonsupplanting rule (see below), these requirements are the main instruments in the Act for ensuring that federal aid translates at least partly into added services for handicapped and disadvantaged vocational students. Properly implemented and enforced, these rules would guarantee resource differentials in favor of the handicapped and disadvantaged amounting (by virtue of the 50-50 matching requirement) to at least *twice* the amount of earmarked federal aid.

The effectiveness of the supplemental services and excess cost rules is likely to be much lower in practice than in principle, however, partly because compliance with such rules is inherently difficult to enforce but mainly because OVAE/ED has not issued specific, detailed, and rigorous guidelines as to what constitute supplemental services and how excess costs are to be measured. Excess cost measurement is a technically complex process that, in the absence of detailed rules, affords grantees wide latitude to claim more excess costs than they actually incur. Grantees have strong incentives to claim all the excess costs the rules allow, since each extra dollar so claimed is a dollar transformed from categorical to general aid. Among the principal "loopholes" in the present sketchy excess cost rules are that (1) OVAE/ED has formulated no operational criteria for identifying legitimate supplemental resources in mainstreamed programs; (2) grantees apparently have been allowed to claim as "excess" the total costs of certain resources purchased for the handicapped and disadvantaged (especially equipment), not just the portion that exceeds the cost for regular students; (3) an interpretation that indirect costs may be included in excess-cost computations permits grantees to spend Perkins funds on services that would have been provided anyway; (4) the lack of any OVAE/ED guidelines on how instructional personnel and other resources should be priced for the purpose of cost comparisons creates major opportunities for inflating excess costs; and (5) vague definitions of the comparable regular programs against which costs of programs for the handicapped and disadvantaged are to be compared invite grantees to select standards of comparison that will yield the highest excess costs. In addition, the loose target-group definitions create opportunities to comply with the excess cost rules without actually spending federal aid additively. Grantees can minimize their fiscal obligations by selecting students for whom substantial excess costs would have been incurred even in the absence of the Perkins Act, such as handicapped students receiving services mandated by the Education of the Handicapped Act and disadvantaged students receiving remedial basic skills instruction.

The supplemental services and excess cost rules may also have certain adverse side effects on educational programs. Although a strong pre-Perkins incentive to serve the handicapped and disadvantaged separately has been eliminated, weaker incentives favoring separate programs remain. Concerns about compliance may lead some grantees to spend federal funds on distinctive, unmistakably supplemental, but perhaps low-value ancillary services rather than on upgrading vocational instruction. The fiscal and administrative burdens associated with the rules may even induce some grantees to "opt out" of the Perkins program for the disadvantaged (an option that, according to OVAE/ED, is available to grantees under the Act).

Even if all the aforementioned loopholes were somehow eliminated, the contributions of the supplemental services and excess cost rules to the additivity of federal aid would still be limited in a more fundamental respect: such rules, even in theory, do not necessarily require grantees to incur excess costs greater than they would have incurred in the absence of the Act. Grantees, in demonstrating compliance, may claim credit for excess costs that would have been incurred anyway (e.g., pursuant to the requirements of other federal or state laws) and so are free, without violating the excess cost rules, to divert like amounts of Perkins set-aside funds to other uses. Thus, the excess cost rule is not equivalent to, or a substitute for, an effective nonsupplanting requirement.

The relevant policy options fall into two categories: options for strengthening the existing requirements and options for augmenting (or superseding) them with other targeting strategies. Strengthening the rules means clarifying the definition of supplemental services and specifying how excess costs are to be measured. OVAE/ED could do the former by issuing detailed guidelines and providing examples of appropriate supplemental services for the different target groups. The examples would presumably make clear that augmenting and intensifying vocational instruction for target-group members--reducing class sizes, providing teacher aides, adding instructional time, etc.--is not only an acceptable but also a desirable use of federal aid.

Specifying how excess costs are to be measured is more important and also more complex. Guidelines on the subject would have to (a) identify eligible and ineligible categories of excess costs, (b) stipulate how educational resources, including the services of teachers and other staff, are to be valued for the purpose of excess-cost comparisons, (c) explain which portions of equipment outlays qualify as excess costs, and (d) define the costs of regular programs, or other standards of comparison, against which costs of serving the handicapped and disadvantaged should be compared. It should be noted with respect to the last of these that it is often infeasible to compare costs at the individual program level, and so provisions should be made in the rules for more aggregative comparisons. These could consist, for example, of comparisons of average costs incurred for target-group and nontarget-group students in broad occupational categories, such as business occupations, technical occupations, and agriculture.

It would be desirable in conjunction with these changes in the rules to specify clearly the types of records that grantees must keep to demonstrate compliance. These recordkeeping requirements should probably be differentiated by size of grant to avoid imposing pointless burdens on recipients of small amounts of aid. (Alternatively, aid thresholds might be established below which quantification of excess costs would not be required.)

As to broader policy options, there are two alternative methods of promoting the additive use of Perkins grants, still within the framework of the existing Act, that do not depend mainly on stronger supplemental services and excess cost rules. One is to make the Perkins nonsupplanting requirement rather than the excess cost rule the central targeting provision. The nonsupplanting requirement is useless in its present form, but fully implemented it would be a more potent additivity-enhancing tool than the inherently limited excess-cost constraint. The second and more drastic alternative is to shift from the present aid-targeting strategy to the service mandate strategy reflected (embryonically) in Sec. 204(c) of the present Act. Under this option, the emphasis would shift from ensuring that federal aid is allocated and used properly to establishing that the handicapped and disadvantaged are being served adequately and according to their needs. Both alternatives are discussed further below.

The Matching Requirement

The Perkins Act allows no more than 50 percent of the excess costs of serving the handicapped or disadvantaged to be charged against federal funds; the remainder must be covered by state or local contributions. In theory, this 50-50 matching requirement, linked to excess costs, has the potential to make federal aid more additive and, in some cases, to exert a leveraging effect on state and local outlays for the designated target groups. The likelihood that these benefits will actually be obtained is greatly diminished, however, by several features of the present matching requirement. The interpretation that only statewide matching is required, rather than matching by individual LEAs and institutions, makes it easier for states to comply without actually adding to their support for handicapped and disadvantaged students. (The related interpretation that states may "pass through" the matching obligation to grantees also raises serious equity concerns.) The OVAE/ED doctrine that matching is required only of spending in the aggregate rather than of spending for particular services or programs reduces grantees' obligations to contribute to the costs of federally financed supplemental services. The rule allowing "in-kind" matching of federal aid for the disadvantaged enhances opportunities to claim as matching contributions expenses that would have been incurred even in the absence of Perkins grants. Both the elastic target-group definitions and the loose definitions of legitimate excess costs also make it easy to match federal funds without actually adding to the pertinent expenditure categories. Although it is impossible to quantify the net fiscal effects of matching, they are probably quite small and considerably smaller than what would be obtainable were it not for the aforementioned design problems.

The options for strengthening the matching requirement include requiring direct matching by states or matching by individual grantees. Under the direct-state-matching option, each state would be required to appropriate state funds to match the Perkins handicapped and disadvantaged set-aside grants and then to distribute the combined federal funds and state matching funds to eligible recipients according to the federally prescribed fund allocation formulas. This would compel some states to allocate significant new funds to special-need vocational students. Under the local-matching option, each LEA and postsecondary institution would be required to match federal aid with nonfederal financial contributions to the federally aided activities. This would enhance the leveraging effects of federal aid, but the results would probably be deemed objectionable on equity grounds (i.e., the obligation to match would be imposed on rich and poor grantees alike) unless there were provisions for matching to be on a fiscally equalized basis. Certain options of a more technical nature, such as requiring matching of specific federally funded activities, eliminating in-kind matching or limiting its scope, and defining more precisely how matching contributions are to be valued, would also help to strengthen the matching requirement, especially if combined with one or the other of the broader changes mentioned above.

The Supplement, Not Supplant Requirement

The requirement that federal aid must supplement, not supplant state and local funds is part of the statute (and has been since 1963), but it contributes virtually nothing to the targeting of federal aid because OVAE/ED has declined to provide operational definitions and tests of supplanting or even to acknowledge that the rule applies specifically to Perkins grants for handicapped and disadvantaged students. Moreover, OVAE/ED has tacitly interpreted the requirement in a way that severely restricts its scope and prevents it from interfering significantly with grantees' abilities to use Perkins grants substitutively. Thus, a potentially effective provision (more effective, for instance, than the excess cost rule) has been turned into a "nonrequirement" by the administrative agency's unwillingness to interpret and enforce it.

Given the OVAE/ED stance, Congress would have to do three things to make the nonsupplanting provision effective: (1) rewrite the requirement to make clear that it applies separately to each type of Perkins grant--e.g., Perkins grants for the handicapped must not supplant state-local spending for the handicapped; (2) make clear that the requirement applies to each level of the state-local fiscal system at which supplanting can occur--i.e., to state outlays, to allocations of state aid to local units, and to outlays of individual LEAs and postsecondary institutions; and (3) introduce explicit, operational criteria and tests of supplanting. Among the pertinent criteria are that supplanting has presumably occurred whenever (a) there is a decline in state or local support of vocational education for the handicapped or disadvantaged, (b) a grantee expends fewer nonfederal dollars per handicapped or disadvantaged vocational student than per regular vocational student, (c) a grantee expends less nonfederal money per handicapped or disadvantaged student served under the Act than per comparably handicapped or disadvantaged student not so served or not enrolled in vocational education, or (d) a state or grantee expends Perkins funds to provide services that handicapped and disadvantaged students are entitled to under other laws or policies.

An issue related to supplanting that urgently needs clarification is how Perkins grants are supposed to relate to support for handicapped and disadvantaged students provided under other federal programs and laws: Are the Perkins funds supposed to add to such support, or may they be used to "free up" non-Perkins funds for other uses? Guidance is particularly needed on the proper relationship between Perkins grants for the handicapped and the state-local support to which handicapped secondary students are entitled under the federal Education of the Handicapped Act. Realistically, it seems meaningless to speak of the former as being additive to the latter, since the Handicapped Act creates an essentially open-ended entitlement to "appropriate" services for all handicapped students. Nevertheless, it remains important to make explicit how the two sources of support should be coordinated. In the cases of disadvantaged secondary vocational students eligible for services under ECIA Chapter 1 and postsecondary disadvantaged students eligible for aid under certain higher education programs, a reasonable option is to stipulate that students who benefit from Perkins grants must receive their fair (i.e., proportional) shares of services under these other laws. Otherwise, one set of federal grants is likely to supplant another.

The Equal Access Rule

Section 204(a) of the Perkins Act stipulates that (a) states must guarantee equal access to handicapped and disadvantaged students in recruitment, enrollment, and placement, and (b) equality of access must extend to "the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals." This language notwithstanding, OVAE/ED has insisted that the guarantee of equal access applies only to the particular vocational programs supported with Perkins handicapped and disadvantaged set-aside funds. OVAE/ED's interpretation renders the equal access provision meaningless, since it would guarantee access only to programs to which access is already assured. It would deny the handicapped and disadvantaged equal access even to activities financed with other federal funds, such as Perkins grants for program improvement. Through this grotesque reading of the law, OVAE/ED has interpreted away the protection Congress sought to extend to special-need enrollees in vocational programs.

Moreover, in addition to denying handicapped and disadvantaged students protection, OVAE/ED's interpretation of equal access could do them actual harm. Restricting the right of equal access to programs supported with Perkins set-aside funds may encourage grantees to channel such funds into programs in which the handicapped and disadvantaged students are already concentrated rather than into higher-level programs in which such students may now be underrepresented. This would run directly counter to Congress' desire to eliminate practices that relegate special-need students to low-level programs and occupations.

The basic choice facing Congress with respect to the equal access rule is clear-cut: either do what is necessary to make the equal access guarantee meaningful or acquiesce in OVAE/ED's de facto repeal of this section of the Act. If the decision is to do the latter, it would seem better to eliminate the provision entirely than to retain the present, potentially harmful OVAE/ED version. If the decision is to make equal access meaningful, there are several options Congress might consider for creating an effective guarantee. One such option, of course, is to reaffirm with more explicit statutory language that the Perkins equal access requirement applies to *all* vocational education programs, federally funded or not, and that denial of equal access to *any* program renders an LEA or institution ineligible for federal aid. Given OVAE/ED's position, however, that alone might not suffice, as the agency might construe equality of access so narrowly that the requirement would have little effect. One option for giving the requirement additional force is to incorporate specific standards of equality of access into the law or the legislative history. These might cover, for instance, such matters as nondiscriminatory admission requirements, equal treatment in guidance and placement, the geographical distribution of vocational offerings, and requirements for providing special assistance, where needed, to handicapped and disadvantaged students. Another option, complementary to the above, is to establish procedures for monitoring equality of access and/or channels through which individuals who believe they have been denied access can seek relief. So augmented, the equal access requirement might do more to expand opportunities for special-need students than the Perkins grants themselves.

The Service Mandates

Section 204(c) of the statute says that each handicapped or disadvantaged student who enrolls in an LEA's vocational education programs shall receive an assessment of needs; "special services, including adaptation of curriculum, instruction, equipment, and facilities," designed to meet his or her assessed needs; and certain guidance and counseling services. On its face, this provision seems to establish for handicapped and disadvantaged vocational students a broade entitlement to services similar to that created by the mandate in P.L. 94-142 to serve all handicapped students "appropriately"; however, this is not OVAE/ED's view of what the provision means. Despite the unequivocal statement that students *shall receive* the specified services, OVAE/ED's unwritten interpretation is that LEAs are required to provide such services only if and to the extent that federal funds are available to pay for them--i.e., LEAs need not contribute additional funds of their own. By taking this position, the agency has transformed a mandate to provide services into a rule about how grantees should spend their federal aid. Also, by failing to specify what falls under the heading of "special services," OVAE/ED has left unimplemented the part of Sec. 204(c) that most clearly seems to create an open-ended entitlement. Thus, through a combination of restrictive interpretation and inaction, the agency has effectively nullified this portion of the law.

As matters now stand, Sec. 204(c) may harm rather than help the intended beneficiaries. Under OVAE/ED's interpretation, the parts of Sec. 204(c) mandating need assessments, guidance, and counseling are operational, while the broader mandate to deliver "special services" is not (the cost of the latter could not possibly be met with federal funds). The net effect of the mandate, therefore, may be to draw Perkins funds that could have been used to strengthen vocational programs into marginally useful assessments and other ancillary services, and so to diminish rather than enhance services for the target groups.

The choice facing Congress with respect to the service mandates is a difficult one. On one hand, OVAE/ED's interpretation that the mandates merely specify how Perkins set-aside funds are to be used is irreconcilable with the statute, and the implications of that view, as noted, may be educationally counterproductive. On the other hand, it is unclear that Congress really intended to create a new, open-ended service entitlement for disadvantaged vocational enrollees (the handicapped already have such an entitlement under P.L. 94-142) or that it would have done so if it had recognized the potentially large fiscal impacts on grantees of an entitlement approach. Given the unsatisfactory status quo, the issue urgently requires clarification.

One available option is for Congress to determine that it did not (or does not) intend to create a potentially expensive service entitlement for disadvantaged vocational students. If so, it would probably be better to eliminate Sec. 204(c) entirely than to preserve it in its present emasculated form. The alternative, of course, is for Congress to reaffirm the mandates and to restate them with the specificity, clarity, and force needed to make them effective. The key points that would have to be made explicit, given the current OVAE/ED interpretation, are that (a) any LEA that accepts Perkins funds is bound by the mandate, (b) each handicapped or disadvantaged vocational student is entitled, under the mandate, to instructional and other vocational education services appropriate to meet that student's assessed needs, and (c) an LEA's obligation to provide such services is not limited by the availability of federal funds to pay for them.

Conceivably, a compromise, or in-between, option can be formulated that preserves the basic service-mandate approach without affecting the service mix adversely or imposing heavy fiscal obligations on the service providers. The key principle--substituting service standards for controls over the uses of federal funds--is very attractive, as it promises both improved services for special-need students and less intrusive federal rules. Some possible compromise approaches include setting up limited claims to special services rather than open-ended entitlements, requiring states to develop service standards of their own, and limiting coverage initially to small subsets of the potentially eligible special-need population.

The Fund Distribution Mechanisms

The Perkins Act prescribes specific methods for distributing funds for the handicapped and disadvantaged both among and within states. The interstate distribution takes place in two steps: first, all Perkins funds are distributed among states according to a statutory formula. The formula is based mainly on state populations in various age groups, but with an adjustment for state per-capita income. Second, fixed fractions of each state's allocation (10 and 22 percent, respectively) are set aside for the handicapped and the disadvantaged. According to the statute, the resulting state allotments are then to be distributed among LEAs and postsecondary institutions within each state according to another set of formulas, based this time on (a) the number of economically disadvantaged students enrolled by each eligible recipient, and (b) the number of handicapped or disadvantaged students (as the case may be) served in vocational education. But this is not exactly what takes place in practice. Many states, acting with OVAE/ED's tacit approval, have added to the process an additional step, not called for in the statute, whereby federal aid is divided into separate "pools" for different classes of recipients before the statutory formulas are applied. This changes the distribution of funds substantially, especially between the secondary and postsecondary sectors, from what it would have been if the formulas had been applied as Congress wrote them.

Both the interstate and intrastate distribution processes have important shortcomings, but a number of options for correcting them are available. The main problem with the interstate distribution mechanism is that the combination of a population-based distribution formula and fixed-percentage set-asides for the handicapped and disadvantaged results in large interstate disparities in funding relative to numbers of special-need students to be served. One option for alleviating this problem is to take explicit account in the formula of the numbers of special-need students in each state--e.g., by making the number of low-income persons in each state an important formula factor. Other potentially beneficial formula changes include replacing the present population factors with better indicators of need for vocational education services (ideally, in the longer run, measures of FTE vocational enrollment), modifying the adjustment for per-capita income, and perhaps adjusting for other pertinent state characteristics. A second option is to replace the fixed-percentage set-asides for the handicapped and disadvantaged with percentages that vary according to the percentages of each state's enrollees (or, preferably, each state's vocational enrollees) with disadvantages or handicaps. This alone, however, unaccompanied by a change in the interstate funding formula, would improve the distributions of Perkins funds for the handicapped and disadvantaged at the expense of worsening the distributions of other Perkins grants. A third option is to set aside funds for the handicapped and disadvantaged (and other groups and purposes) at the national rather than the state level and then to distribute the share for each group among states according to appropriate, group-specific criteria. For instance, the national pool of funds earmarked for the disadvantaged might be distributed mainly in proportion to the number of low-income persons in each state. Of the available options, the last seems best-suited to match fund allocations to educational needs.

At the substate level, the statutory fund distribution formulas are flawed in several respects. One of the two formula factors, the number of handicapped or disadvantaged students served in vocational education, is ill-defined and impossible to measure accurately with existing data. The other, the number of economically disadvantaged enrollees, is of dubious relevance to the distribution of funds for special-need vocational students. Both are manipulable by states and local grantees. Unfortunately, the options for improving these factors are limited in the short run by lack of data. There are no figures on vocational enrollments, much less handicapped and disadvantaged enrollments, in LEAs and postsecondary institutions. Congress stipulated in the Perkins Act that such data were to be developed, but thus far with little apparent effect. Meanwhile, it would probably be better to distribute aid according to total numbers of handicapped and disadvantaged enrollees than to continue using the present ad hoc, unreliable, and unverifiable counts of "handicapped and disadvantaged students served in vocational education." As to other formula improvements, there are reasons to consider (a) adding certain now-absent factors, such as measures of local economic conditions and fiscal capacity, (b) modifying the mathematical form of the present formula, and (c) establishing a lower-bound on grant size to eliminate many of the very small grants provided under the present rules.

A distributional issue that requires special attention is how funds for special-need students should be divided between the secondary and postsecondary sectors. Theoretically, under the statute, the division is supposed to emerge as a by-product of the formula-based distributions of funds to individual grantees. Actually, in some states, it is determined by state officials, using the extralegal OVAE/ED-approved fund pool procedure described earlier. Both methods are unsatisfactory--the former because uniform target-group definitions cannot be applied validly to both secondary and postsecondary institutions; the latter because it is arbitrary, subject to abuse, and unauthorized by law. The relevant options include (a) developing a standard rule or formula for each state to use in dividing funds between the secondary and postsecondary sectors (e.g., division in proportion to FTE vocational enrollments), (b) establishing more general guidelines for state-determined allocations between sectors and/or classes of institutions, and (c) making the secondary-postsecondary split at the federal level and then distributing funds for each sector separately among the states.

Finally, looming in the background is the more fundamental question of whether any federally prescribed intrastate distribution process, no matter how well designed, can be meaningful when it controls only 32 percent of the available federal funds. A state, if so inclined, can offset the federally prescribed distributions of the set-aside grants by reallocating, in a countervailing manner, either other Perkins funds (the 68 percent not controlled by federal formulas) or vocational education funds of its own. In this respect, federal control is an illusion. Possible methods of preventing such offsetting behavior include prohibiting states from "penalizing" grantees on the basis of their receipts of formula-based grants or, more drastically, requiring that all Perkins grants be distributed according to federal formulas. Realistically, however, the federal government cannot expect, by providing only about 6 percent of all vocational education funds, to exert significant influence over the distributions of vocational education resources within states.

The Set of Targeting Provisions as a Whole

Although there seems, on paper, to be a formidable array of requirements for ensuring that Perkins grants for the handicapped and disadvantaged are used as Congress intended, the appearance is deceiving. Some provisions have never been implemented, while others have been interpreted in ways that dilute or eliminate their effectiveness. Specifically, of the principal targeting requirements applicable, or potentially applicable, to grants for the handicapped and disadvantaged,

- the *definitions of "disadvantaged" and "vocational student"* are too loose to ensure that Perkins funds go to the intended beneficiaries,
- the *supplemental services and excess cost requirements* help to ensure that target-group members receive some extra services, but are weakened by the lack of specific definitions and rules for measuring excess costs,
- the *50-50 matching requirement* has relatively little effect because of the interpretations that it applies only statewide and to services in the aggregate,
- the *supplement, not supplant requirement* is inoperative because it has never been backed up with specific definitions and tests of supplanting,
- the *maintenance of effort requirement* is useless because OVAE/ED has said that it covers only funds from "state sources,"
- the *equal access requirement* has been nullified by OVAE/ED's assertion that it applies only to programs funded with Perkins handicapped and disadvantaged grants,
- the *service mandates* have been rendered ineffective by the interpretation that they do not oblige LEAs to provide services but merely indicate how Perkins funds are to be used,
- the *interstate and intrastate fund distribution mechanisms* have major technical and conceptual flaws.

In sum, the existing provisions offer, at best, only the assurance that the handicapped and disadvantaged will receive some extra services compared with their nonhandicapped and nondisadvantaged counterparts. They do not guarantee that the extra services will be worth, in the aggregate, anything near twice the amount of federal aid, which is what the statute theoretically demands. More important, they do not guarantee that special-need students will receive significantly more supplemental services than they would have received in the absence of the Perkins Act. Consequently, much of the money that Congress appropriates each year, nominally to enrich vocational education for special-need students, is likely to be turned instead into general aid to states, LEAs, and postsecondary institutions.

Although the weakness of the present targeting mechanism is due in part to gaps, ambiguities, and conceptual flaws in the statute itself, it is attributable in considerably greater part to the way in which OVAE/ED has chosen to interpret and implement the law. In several important instances, the agency has failed to translate potentially effective provisions of the Act into specific, operational, enforceable, and sufficiently rigorous rules. In others, it has interpreted statutory provisions (explicitly or tacitly) in ways that appear to distort, undercut, or contradict Congressional intent. The present statute, flaws and all, could support considerably stronger resource allocation and targeting rules than are now in effect. This means that, in theory, OVAE/ED could do a great deal on its own, acting within the bounds of the present statute, to target grants for the handicapped and disadvantaged more effectively. Barring a major shift in the agency's orientation, however, such action seems highly unlikely, and so, as a practical matter, any initiative to improve the targeting of federal aid will probably have to come from Congress.

PERKINS GRANTS FOR PROGRAM IMPROVEMENT

In what was billed as a major change in federal vocational education policy, Congress stipulated in the Perkins Act that federal aid would no longer be provided for general support of vocational programs. Instead, all Perkins funds not reserved for particular target groups (43 percent of the total) were to be used henceforth only to support "program improvement, innovation, and expansion" activities. Unfortunately, this change in the stated purpose of aid was not backed up with the kinds of provisions needed to make it effective. Consequently, the program improvement grants authorized under Title IIB of the Act are likely to generate little additional spending for program improvement in vocational education. Title IIB funds are about as likely to be used for general support--i.e., to maintain ongoing vocational programs--as were funds under the previous Vocational Education Act.

Problems in Defining Permitted Uses of Title IIB Funds

When Congress wrote Title IIB, it failed to define clearly either the types of activities that qualify as program improvement, innovation, and expansion or the types of costs to be covered with federal program improvement funds. OVAE/ED, in drafting the regulations, failed to make the key conceptual distinction between developing, improving, or expanding a program and operating one. Instead, it tacitly adopted minimally restrictive definitions that apparently allow grantees (a) to pay the full costs of new or expanded programs (including ordinary operating costs) with federal aid, (b) to construe liberally the "aspects" of improved programs that can be federally funded, and (c) to pay for acquiring virtually any equipment, whether related to program improvement or not. Consequently, much Title IIB money is likely to be used for expenses that grantees would have incurred anyway, leaving little to generate new program improvement activities.

A definition more in keeping with the purpose of Perkins program improvement grants would limit expenditures of Title IIB funds to the *incremental* costs of specific, improvement-related activities, over and above the normal costs of operating vocational programs. Under this definition, costs incurred specifically to develop and set up new or improved programs (e.g., costs of curriculum development, teacher training, and initial equipment and materials) would be payable with Title IIB funds, but regular operating costs (e.g., teachers' salaries and equipment maintenance and replacement) would be excluded. Grantees would have to use nonfederal funds to cover the costs that would have been incurred to serve the same students in the absence of program improvement, innovation, or expansion efforts.

Targeting and Additivity

The likelihood that Perkins Title IIB grants will add significantly to program improvement outlays or activities is small because of a combination of weak targeting provisions and circumstances that make it easy for grantees to use federal aid substitutively. According to the OVAE/ED rules, programs or services deemed to be new, improved, or expanded may be financed with Title IIB funds for up to three years. This means that a typical grantee is likely to have enough qualifying activities underway at any given time to absorb its Title IIB grant several times over. Two statutory provisions, the nonsupplanting and matching requirements, should help, in theory, to limit fiscal substitution, but they have been interpreted in ways that make them ineffective. The nonsupplanting rule is virtually a "nonrequirement," as it has never been implemented with operational definitions and tests of supplanting. The matching requirement is weak because it applies only statewide and in the aggregate; even if it were stronger, most grantees would be able to comply easily without devoting any additional funds of their own to program improvement activities.

The general conclusion that emerges from all this is that there is a disjunction between the proclaimed goals of Title IIB of the Perkins Act and the policy instruments provided to accomplish them. Federal aid can help to improve vocational education only if and to the extent that it adds to the volume of program improvement activity that would otherwise have been undertaken. Yet only a small fraction of the $300-plus million in Title IIB funds is likely to have any additive effect; the remainder constitutes general support for vocational education, indistinguishable from the general aid provided under the pre-1984 statutes.

Distributional Concerns

States now have essentially total control over the intrastate distributions of Title IIB funds; yet the Act expresses or implies several federal interests in the distributional outcomes. There is a contradiction. In particular, the statute says that program improvement activities should be supported "particularly in economically depressed urban and rural areas," but there is no mechanism for producing that result.

Effects on the Resource Mix: the Incentive to Buy Equipment

The present rules encourage grantees to spend Title IIB funds on equipment by (a) making virtually any equipment outlay an acceptable and trouble-free use of federal aid, (b) defining federally fundable costs more liberally for equipment than for other resources, and (c) subsidizing equipment purchases more heavily than other outlays. The likely consequence is a distorted resource mix in vocational education--that is, one richer in equipment and poorer in other resources than is educationally optimal.

Policy Options

Broadly speaking, there are three ways for policymakers to respond to the shortcomings of the Title IIB program improvement grants. One is to do nothing, leaving Title IIB as essentially an unrestricted block grant, even though it is nominally a program for improvement, innovation, and expansion. The second is to work within the existing Perkins framework to make the program more effective. This entails tightening, strengthening, and augmenting the targeting provisions and modifying the fund distribution rules. The third is to adopt an alternative strategy for accomplishing federal program improvement goals.

Within the present Perkins framework, there are numerous options for increasing the additivity of Title IIB grants (the rate at which federal dollars translate into incremental program improvement activities). Of these, the most basic is to tighten the definitions of outlays chargeable to Title IIB, making clear that federal funds may pay only for the incremental costs of upgrading or expanding programs and not for any ordinary costs of program operation. Other potentially beneficial changes include clarifying and narrowing the list of permitted uses of Title IIB funds, delimiting federally fundable program expansion activities, and placing strict limits on the use of federal aid to purchase equipment. The last is important not only to focus resources on program improvement but also to counter the strong pro-equipment bias built into the present Title IIB program.

Other options that could contribute to improved targeting of federal aid (in conjunction with the aforementioned definitional changes) include implementing the existing but now-inoperative nonsupplanting rule and strengthening the Title IIB matching requirement. The former would entail defining prohibited supplanting and writing operational tests of supplanting into the regulations. The latter could take the forms of requiring separate matching by each recipient and counting as matching contributions only state-local outlays for specific federally funded activities.

There are also several options for protecting federal interests in the intrastate distribution of funds. The possibilities include prescribing an intrastate distribution formula, establishing specifications or guidelines for state-designed formulas or state-administered nonformula distribution processes, and imposing certain constraints on distributional outcomes. These options would serve, in varying degrees, to promote distributional equity, to assert federal priorities, and--a matter of special concern--to prevent states from using Title IIB funds to offset the federally prescribed distributions of Perkins funds for the handicapped and disadvantaged.

Outside the Perkins framework, there are at least two strategies of a more radical nature that the federal government could adopt to upgrade the quality of vocational education programs. One, the R&D strategy, would emphasize knowledge creation and generalizable, fundamental, long-term reform of vocational education practice. Concretely, this means that federal program improvement funds would be concentrated on organized, competitively selected, relatively large-scale research, development, experimentation, and evaluation efforts and would no longer be widely dispersed or available for routine program improvements. The other, the performance incentive approach, would alter the federal role even more drastically. Title IIB grants would be replaced by performance-based incentive grants, distributed among institutions or programs on the basis of educational and/or economic outcomes. The federal government would concern itself with results rather than means, with rewarding improvement rather than channeling resources to particular program improvement activities.

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1. INTRODUCTION

This is the final report of a study of programs of federal aid for vocational education supported under the Carl D. Perkins Vocational Education Act of 1984 (P.L. 98-524), conducted by SMB Economic Research, Inc. for the National Assessment of Vocational Education (NAVE). The study offers an assessment of the relationships between federal goals and policy instruments in vocational education. Its purposes are, first, to assess the designs of the Perkins grant programs and their suitability for accomplishing Congressionally defined objectives, and second, where ends and means appear to be mismatched, to formulate and evaluate promising policy options. The study's main general finding is that the present program designs are indeed seriously flawed, to the extent that most federal vocational education aid is unlikely to translate into incremental funding for the particular types of students and the particular vocational education activities that Congress intended to support. Consequently, much of the report is devoted to spelling out alternative approaches, ranging from specific changes in law or regulation to broad shifts in strategy, to developing more effective instruments of federal vocational education policy.

FEDERAL VOCATIONAL EDUCATION GOALS AND THE PROBLEM OF TARGETING PERKINS FUNDS

Under the Perkins Act, the Office of Vocational and Adult Education (OVAE) of the U.S. Department of Education (ED) now distributes over $900 million per year in federal grants-in-aid for vocational education. These grants, created by the Congress and shaped and administered by the Executive Branch, are the principal instruments available to the Federal Government for promoting and influencing the vocational education enterprise in the United States. They are intended to channel resources to certain places, certain types of vocational education activities, and certain classes of beneficiaries, and thereby to "make a difference" in how and for whom vocational education is provided.

Although the Perkins Act refers in its preamble to such broad societal purposes as raising the productivity of the American labor force and stimulating national and regional economic growth, concretely it focuses on two narrower goals. The first, usually characterized as the *access* or *opportunity* goal, is to expand and strengthen the vocational education services available to certain underserved or special-need populations. The second, the *program improvement* goal, is to raise the quality of vocational education programs generally and to help make good programs more widely available. In pursuit of the opportunity goal, the Act earmarks ("sets aside") specific amounts of federal aid for six categories of beneficiaries, or target groups: the educationally and economically disadvantaged, the handicapped, adults, single parents and homemakers, participants in sex equity programs, and inmates of correctional institutions. In furtherance of the improvement goal, it provides grants for program improvement, innovation, and expansion activities. In fiscal year 1989, the amounts of aid designated for these purposes were as indicated in Table 1. In addition, federal funds were provided for state administration of the federally aided programs and for certain other purposes and programs not covered by this study.[2]

Table 1

Funding of Grant Programs under the Perkins Act, FY 1989

Category of Funds	Appropriation ($ millions)
Funds designated for particular target groups (total)	$434.0
Handicapped	76.1
Disadvantaged	167.5
Adults	91.4
Single parents and homemakers	64.7
Participants in sex equity programs	26.7
Inmates of correctional institutions	7.6
Funds for program improvement, innovation, and expansion	327.4
Funds for state administration	57.3
Other Perkins funds	99.7
Total, all Perkins funds	$918.4

Whether the goal is to expand access or improve programs, federal aid must be "targeted" properly if it is to make the intended contributions. That is, funds must be directed to the vocational education activities and/or classes of beneficiaries specified by Congress and, more precisely, must translate into net additions to the resources available to support those activities or to serve the designated target groups. This means, in the case of grants aimed at enhancing opportunities for the handicapped, the disadvantaged, and other target populations, that Perkins dollars must add to the total resources--federal, state, and local--that would otherwise have been provided to serve such students. In the case of Perkins program improvement grants, it means that federal dollars must add to the resources that would otherwise have been devoted to program improvement, innovation, and expansion efforts in vocational education. Only to the extent that federal aid increases outlays in the pertinent categories can it have the benefits that Congress intended. Thus, proper targeting of aid, in the specific, fiscally additive sense defined here, is a prerequisite for accomplishing the purposes of the Act.

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[2] The FY 1989 appropriation for basic vocational education grants to states was $819 million, of which slightly more than 7 percent was reserved for state administration. In addition to the basic grants, another $100 million was appropriated for such things as consumer and homemaking education, support of community based organizations, set-asides for Indians and Hawaiian natives, and various national research, demonstration, and data collection activities (Department of Education budget summary, August 17, 1988).

But long experience with categorical grant programs in education (and in other federally aided fields) has shown that such targeting of federal aid does not occur automatically and cannot be taken for granted. State and local priorities do not necessarily mirror federal priorities, and the items for which Congress earmarks federal funds are often not the ones on which the aid recipients themselves would choose to spend marginal dollars. Where priorities diverge and circumstances and federal rules permit, grantees are likely to spend federal funds substitutively rather than additively. That is, they may use federal dollars to replace rather than augment state and local outlays for the federally designated activities. This "frees up" nonfederal funds for other purposes and, in effect, converts nominally categorical federal grants into general aid. Such fiscal substitution is particularly likely to occur in vocational education because (a) federal aid constitutes only a small fraction--perhaps 6 percent--of total vocational education spending, making it easy to reallocate nonfederal funds in response to the availability of federal dollars, and (b) federal vocational money is not "new" but has flowed for many years and become a regular source of support for ongoing vocational programs. Under these conditions, merely specifying that federal aid shall be "used for" certain purposes, or to benefit certain types of students, is insufficient to produce the desired fiscal and allocative effects.

RESOURCE ALLOCATION AND TARGETING PROVISIONS

Recognizing that there is a significant targeting problem, the Congress has incorporated into the Perkins Act certain requirements and constraints intended to ensure that federal vocational education aid is used to advance federal purposes and not merely to augment the general budgets of states, localities, or schools. Some of these provisions appeared in previous vocational education legislation, some have been adapted from other federal education programs, and some are new or modified under the Perkins Act. The most detailed requirements are those attached to the Perkins grants for handicapped and disadvantaged vocational students. Such grants, according to the rules, are to be distributed among local education agencies (LEAs) and postsecondary institutions within states according to federally prescribed formulas, to be used only to pay the "excess costs" of "supplemental services" for students in the designated target groups, and to be matched dollar for dollar with state or local contributions toward such excess costs. The statute also requires grant recipients to ensure that handicapped and disadvantaged students have equal access to all vocational programs and, in the case of LEAs, to provide all such students with certain federally specified services. In comparison, the "strings" attached to grants for the other Perkins target groups are much looser. The requirement for 50-50 matching does apply to Perkins grants for adults, but otherwise the main condition is simply that federal aid must be "spent on" students in the specified categories. As to the large block of Perkins funds designated for "program improvement, innovation, and expansion," the principal requirements are that such funds must be expended for types of activities enumerated in the law, must not be used to maintain existing programs or services, and must be matched with state or local contributions. In addition, states must offer assurances that all Perkins grants will be used to "supplement, not supplant" funds from state and local sources and are supposed to maintain their own levels of fiscal effort to support vocational education.

The importance of these resource allocation and targeting provisions is not widely appreciated. Without them, Perkins grants, regardless of how they are labeled, would amount to little more than general-purpose subsidies to states, LEAs, and postsecondary institutions. The likelihood of achieving federal vocational education goals depends strongly on how well the provisions work in directing resources to the intended uses. Accordingly, this report examines each provision in detail: what it is intended to accomplish, whether it is well-conceived and appropriately designed, how it has been interpreted, whether it has been implemented satisfactorily, and, where necessary, how it might be altered or improved.

ISSUES AND EVALUATION CRITERIA

The study addresses multiple issues concerning the Perkins resource allocation and targeting provisions, of which the effectiveness issues raised above are the most important. The following enumeration of the issues also indicates the criteria to be used in evaluating existing and alternative targeting mechanisms.

Rationality, Clarity and Consistency. Are the Perkins resource allocation and targeting provisions (as set forth in the statute, the regulations, and less formal OVAE and ED guidance) rational, clear, and consistent? In particular, are the detailed rules and interpretations promulgated by the Executive Branch consistent with the letter of the law and with what Congress intended? What ambiguities are there about what grantees are required or permitted to do with federal funds?

Potential Effectiveness. How effective can the present types of resource allocation and targeting provisions be, in theory, in ensuring that resources will be allocated and used in accordance with Congressional intent? Specifically, assuming that the requirements were fully implemented and rigorously complied with by states and grantees, to what degree would they ensure that federal funds are expended additively for the specified purposes and/or the designated beneficiaries?

Likely Effectiveness in Practice. How effective are the Perkins targeting provisions likely to be in practice in ensuring that federal funds are used as intended, taking into account the practical difficulties of implementing such requirements in a multi-tiered (federal-state-local) government system and enforcing compliance with the letter and spirit of the rules?

Necessity and Burden. Are the present requirements necessary to accomplish federal purposes in vocational education, or are they unduly restrictive? What administrative and costs do the Perkins rules impose on states and local units, and are they commensurate with the potential benefits? Would simpler, more flexible, or less burdensome rules serve to accomplish the same ends?

Distributional Implications. Taking into account both the explicit fund distribution mechanisms (formulas) and the other Perkins resource allocation and targeting provisions, are federal funds likely to be distributed equitably among states, LEAs, and postsecondary institutions and in a reasonable relationship to needs for federal assistance?

Incentives and Side Effects. What effects are the Perkins provisions likely to have on state and local decisions about program offerings, student selection and placement, modes of service delivery, and other features of vocational programs? What are the likely effects of the provisions (whether intended or inadvertent, desirable or undesirable) on the resource mixes and designs of vocational programs?

PROBLEMS AND POLICY OPTIONS

The discussions of policy options in this report are motivated by and directly related to problems revealed by the assessment of the existing provisions. Examples of the types of findings that have led to consideration of particular options are that (a) some Perkins requirements are too loose or too vaguely formulated to produce the intended allocative results, (b) certain forms of nonadditive use of federal aid are not covered, or covered adequately, by the present requirements, (c) "loopholes" in the present rules permit diversions of federal aid to uses not intended by Congress, and (d) certain rules are likely to have undesirable side effects on the substance of vocational programs.

The options examined span the range from minor revisions and refinements of existing provisions to broad changes in strategy and program design. At the minor-revision end of the scale are such things as modifying the criteria for membership in the handicapped or disadvantaged target groups, narrowing the list of federally fundable program improvement activities, and revising the definition of what qualifies as a state or local matching contribution. In what one might describe as the mid-range of policy options are such items as introducing the principle of serving students in greatest need first, establishing detailed rules for quantifying the excess costs of programs, and restricting the percentage of Perkins program improvement funds that can be used to buy equipment. At the more drastic end of the scale are such options as allocating grants for the disadvantaged to particular target schools, introducing specific tests of compliance with the Perkins nonsupplanting requirement, and requiring states to allocate program improvement funds as competitive project grants. (Note: more drastic options, such as abolishing set-asides for target groups or earmarking all Perkins funds for program improvement are not considered here because they presuppose changes in the basic federal vocational education goals, not just in the means of carrying them out.)

NATURE, SCOPE, AND LIMITATIONS OF THE ANALYSIS

This is an assessment of the designs of federal grant programs rather than an evaluation of program outcomes. The analyses presented are logical, conceptual, and theoretical rather than empirical. In this respect, the study complements the empirical inquiries (surveys, case studies, and statistical analyses) undertaken by the National Assessment of Vocational Education.

Although the assessment focuses on the Perkins statutory and regulatory framework, and is in that respect "legalistic," it has been guided primarily by economic concepts. Emphasis has been placed, in analyzing the various resource allocation and targeting provisions, on the constraints that each provision imposes, the incentives that each provision creates for states and local grantees, and the likely fiscal and allocative responses of states and grantees to the combined incentives and constraints. The underlying conceptual framework is that embodied in the economic theories of state-local fiscal behavior and state-local response to intergovernmental aid, as developed in the public economics/public finance literature; however, no formal economic analyses have been undertaken for the study and no explicit economic models are presented.

The primary information sources for the study have been the documents that make up and elucidate the Perkins legal framework: the Perkins Act itself, the Department of Education's regulations and accompanying interpretations and guidelines, related OVAE and Departmental materials, and similar documents pertaining to federal Vocational Education Act

(VEA) that preceded Perkins. Other important sources have included Congressional committee reports, analyses of the Perkins Act and its predecessors prepared by public interest groups, policy studies of federal vocational education policy and vocational education generally, and general literature on the designs and effects of federal grants. Certain specific items of information have been extracted from NAVE's own draft reports and reports prepared by NAVE contractors, and some have been furnished directly by members of the NAVE staff.

This report also reflects information and opinions obtained from approximately 15 interviews with persons involved in drafting, interpreting, and administering the Perkins Act or in implementing Perkins-funded programs. The interviewees include current and former officials of OVAE and other ED offices, current and former Congressional staff members, interest group representatives, and policy analysts. These interviews have been especially useful for clarifying matters of legislative history and Congressional intent and exploring alternative interpretations of some of the more ambiguous and controversial Perkins provisions.

The most important limitation of the study is inherent in its nature. A conceptual, nonempirical inquiry like this one can yield information on what federal rules require, what they allow, what incentives they create, and even what responses are theoretically predicted, but it can never yield findings about how grantees actually behave. In particular, that grantees may not be effectively constrained to spend federal funds as intended does not rule out the possibility that they will comply voluntarily with the spirit of the Act, using federal aid additively for the purposes specified by Congress. All that one can demonstrate with a logical analysis is that the existing provisions are insufficient to guarantee the proper targeting of federal aid; to show that funds are actually being allocated or used improperly requires empirical research.[3]

Two other important limitations of the study reflect restrictions on its scope. The first is that the study examines the federal resource allocation and targeting provisions but not any additional requirements that individual states impose on grantees. It is possible, therefore, that the LEAs and postsecondary institutions in certain states--those with committed and activist state-level administrators--may be more effectively constrained to spend federal aid as intended than this assessment suggests. The second is that the study deals with federal funds provided under the Perkins Act but not with aid from other federal programs. This is significant at the postsecondary level, where Perkins grants are small relative to other forms of federal assistance. It is possible that federal aid as a whole is more effective in accomplishing federal goals than the analysis of one law, the Perkins Act, implies.

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[3] It should be noted, however, that the key targeting issue, whether federal aid adds to state-local spending on the designated students or activities, is currently not susceptible to empirical inquiry. One reason is that data on vocational education spending, either in the aggregate or by type of student, are generally unavailable. A more fundamental reason is that federal vocational education aid has been available for so long and has become so much a part of the system that it is unlikely that one could estimate empirically its impact on, or contribution to, support for vocational programs.

ORGANIZATION OF THE REPORT

The main body of this report is organized, first, around the major grant programs supported under the Perkins Act and, second, around the individual resource allocation and targeting provisions. Because there are more provisions, and more complex provisions, pertaining to Perkins grants for the handicapped and disadvantaged than to all other Perkins grants combined, the bulk of the report pertains to those two programs.

The chapters on Perkins grants for the handicapped and disadvantaged, include the following:

- Chapter 2. Perkins grants for the handicapped and disadvantaged: history, purposes, and key provisions
- Chapter 3. Target group definitions, student selection, and permitted uses of funds
- Chapter 4. The supplemental services and excess cost provisions
- Chapter 5. The matching requirement
- Chapter 6. The supplement, not supplant requirement
- Chapter 7. The service mandates and equal access provisions
- Chapter 8. The interstate and intrastate fund distribution mechanisms
- Chapter 9. The set of targeting provisions as a whole

A single long chapter, Chapter 10, contains the analysis of existing and alternative designs for the program improvement, innovation, and expansion grants authorized under Title IIB of the Act.

NOTES ON NOMENCLATURE

There are numerous references in the report to specific statutory and regulatory provisions. Unless stated otherwise, "the Act" or "the statute" refers to the Perkins Act (P.L. 98-524) of October 19, 1984. References to "the regulations," unless otherwise indicated, are to the Perkins regulations in Title 34, Parts 400 et seq. in the *Code of Federal Regulations* (CFR), issued August 16, 1985. Specific regulations are cited by giving the Title number, followed by CFR, followed by the pertinent section number--e.g., 45 CFR, Sec. 311(a). References to materials appearing in the *Federal Register* (FR), which include official explanations and interpretations of the program regulations, cite the volume number, followed by FR, followed by the page--e.g., 50 FR 33201.

The report also refers frequently to views, policies, or actions of the Office of Vocational Education (OVAE), which administers the Perkins Act, of its predecessor, the Bureau of Occupational and Adult Education (BOAE), and of the U.S. Department of Education (ED). In many instances, it is not apparent whether a policy position or interpretation is attributable to OVAE itself or to some other office or entity within the Department, such as, e.g., the Office of the General Counsel. In such cases, the interpretation or position in question is attributed to OVAE/ED--a formulation that is meant to indicate that the views or actions described are those of OVAE *or* some other part of the Education Department.

2. PERKINS GRANTS FOR THE HANDICAPPED AND DISADVANTAGED: HISTORY, PURPOSES, AND KEY PROVISIONS

The federal role in supporting vocational education for the handicapped and disadvantaged has evolved dramatically since its emergence in embryonic form in 1963. At the beginning, Congress did little more than acknowledge that handicapped and disadvantaged students, too, were entitled to vocational education services. Today, the programs of aid for such students are the most fully developed of the vocational education grant programs under the Perkins Act. Compared with the other Perkins programs, they have clearer resource allocation goals and more specific resource-use and targeting requirements. But these adjectives are relative. Although the requirements seem detailed, there are major uncertainties about what the recipients of grants for the handicapped and disadvantaged are required or permitted to do. Although they seem prescriptive (excessively so, according to some state and local officials), it is doubtful that they can produce the allocative outcomes that Congress intended. That the rules are relatively elaborate does not mean that they are well-designed or effective. As will be seen, there are reasons to doubt that the present mechanism is adequate to control the uses of federal funds, that it can deliver the desired benefits to handicapped and disadvantaged vocational students, or that it is having salutary effects on the substance of vocational programs.

EVOLUTION OF FEDERAL AID FOR VOCATIONAL EDUCATION OF HANDICAPPED AND DISADVANTAGED STUDENTS

When Congress crafted the Vocational Education Act (VEA) of 1963 P.L. 88-210), it offered students with special needs little more than recognition and a blessing. The Act authorized states to spend federal vocational education aid on, among other things, "vocational education for persons who have academic, socioeconomic, or other handicaps that prevent them from succeeding in the regular vocational education program" (P.L. 88-210, Part A, Sec. 4(a)).[4] Any federal funds expended for that purpose (and for each other authorized purpose under the Act) were to be matched dollar for dollar with state and local funds. But although services to special-need students were authorized, they were not required, and no specific amounts of federal aid were allocated to support them.

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[4] The VEA also established a separate program of grants for research, training, experimental, developmental, or pilot programs in vocational education for youths with the said handicaps, particularly in economically depressed communities, and called for services to youths who had dropped out of school or were unemployed (Sec 4(c)). Note that the term "handicapped," as used in the 1963 Act, refers not just to students with what are now called handicapping conditions but also to certain categories of students now labeled "disadvantaged."

By the time the VEA came due for its first reauthorization in 1968, the federal role in education had been transformed. The Elementary and Secondary Education Act (ESEA) of 1965 had been passed, and underwriting the education of special-need pupils had become the most important federal responsibility in the elementary-secondary field. Reflecting this new and enlarged view of the federal purpose, and responding to findings that handicapped and disadvantaged students had little access to vocational programs, Congress, in the Vocational Education Amendments of 1968 (P.L. 90-576), "set aside" substantial fractions of federal vocational education grants to the states--10 percent and 15 percent, respectively--for services to such students. In addition, the 1968 Amendments established a separately funded program of aid for vocational services for the "academically and socioeconomically handicapped." The 1968 approach--earmarking certain fractions of federal vocational education aid to states for handicapped and disadvantaged students--has remained the basic strategy for aiding these groups in each subsequent reauthorization, up to and including the Perkins Act.

When the federal vocational education program was next overhauled in the Education Amendments of 1976 (P.L. 94-482), the requirements for serving the handicapped and disadvantaged were modified and strengthened in several important respects. The category of disadvantaged was extended to embrace limited-English proficient (LEP) students, and the corresponding set-aside percentage was increased to 20 percent. The separate special program for the disadvantaged established in 1968 was retained. A requirement for separate state-local matching of federal aid for the handicapped and disadvantaged, which had been deleted from the statute in 1968, was reinstated. The number of special-need students enrolled by each grantee was designated as a factor to be taken into account in distributing funds within states. Most important, the concept that federal funds may be expended only for the *excess costs* of serving the handicapped or disadvantaged in vocational education was introduced (albeit in program regulations rather than in the statute itself and in principle more than in practice).

The latest stage in this development has taken place under the Perkins Vocational Education Act of 1984 (P.L. 98-524). Federal funds for vocational education of the handicapped and disadvantaged are now dispensed through what are essentially two separate grant programs under the Act. These programs feature federally prescribed intrastate distribution formulas, rules to ensure that federal funds are used to finance supplemental services for the intended beneficiaries, and requirements for 50-50 matching of the federal contributions to the excess costs of vocational education for handicapped and disadvantaged students. The funds earmarked for the handicapped and disadvantaged now amount to 10 percent and 22 percent, respectively, of basic vocational education grants to states. Moreover, in addition to prescribing how aid is to be allocated and used, the Perkins Act requires equal access to services for handicapped and disadvantaged students and directs grantees to provide certain specified services to all such students enrolled in vocational programs. Although it is too early to be sure, the last-mentioned statutory requirement, a service mandate apparently modeled after existing mandates to serve all handicapped children "appropriately," could signal another major evolutionary step in the federal role in vocational education.

INTENDED USES AND EFFECTS OF FEDERAL AID

What the Congress hoped to accomplish for handicapped and disadvantaged students under the Perkins Act is clear in some respects but uncertain in others. There is little doubt about the general goals. The most directly applicable purpose stated at the beginning of the Perkins Act (Sec. 2) is

> to assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially individuals who are disadvantaged, who are handicapped, [etc.].

To emphasize this "access" goal, Congress affixed the name, "Vocational Education Opportunities Programs," to the part of the Act (Title II, Part A) that authorizes grants for the handicapped, the disadvantaged, and other target groups. In addition, another stated federal purpose, "to assist the States to expand, improve, modernize, and develop quality vocational education programs..." applies to vocational education for the handicapped and disadvantaged as well as to other vocational programs. It seems fair to say that the general Congressional goals are to provide (a) more access to vocational education services, (b) more vocational education services, and (c) better vocational education services to handicapped and disadvantaged students.

But general statements of purpose do not clarify how Congress intended Perkins funds for the handicapped and disadvantaged to be used and what impacts it intended such funds to have on outlays and services for the designated beneficiaries. One must extract or infer these more concrete aspects of Congressional intent from the language and logic of the legal framework. Several different resource allocation objectives, or principles, are implicit in different parts of the statute. Some are clear-cut but others are vaguer, leaving room for debate over what qualifies as proper allocation or use of federal aid.

The allocative principle that comes through most clearly in the Perkins legal framework is that Congress wants federal aid to augment, or supplement, both the services provided to handicapped and disadvantaged students and the funds available to pay for those services. It would be contrary to Congressional intent if federal funds were "used for" the intended services and beneficiaries in only an accounting sense without increasing the total outlays--federal, state, and local combined--devoted to such activities. This is the principle of *additivity*: federal funds are supposed to add to, or supplement, the services available for the purposes designated by Congress and to be expended only for the excess costs of such services; they are not supposed to substitute for nonfederal funds nor to relieve grantees of the costs of serving handicapped and disadvantaged students. Moreover, the presence in the Perkins Act of a requirement for state-local matching of the federal contribution to excess costs of programs indicates that Congress hoped to increase spending for the target students not just by the amount of federal aid but by a multiple of that amount. Whether the Perkins mechanism is adequate to produce this kind of fiscal additivity is a major consideration in all that follows.

The emphasis on supplemental services in the Perkins provisions for the handicapped and disadvantaged represents a major departure both from the strategy applicable to other groups and activities under the Perkins Act and from the approach to aiding special-need students under earlier legislation. The principle that federal aid must be used additively does not apply nearly as explicitly to the 68 percent of Perkins funds not earmarked for the handicapped and disadvantaged, and in some instances it does not apply at all.[5] Most such funds, therefore, constitute little more than general-purpose federal aid. It did not apply even to the handicapped and disadvantaged under pre-Perkins statutes, except to the extent that it was reflected in a limited excess cost rule after 1976.[6] The stronger additivity requirements in the Perkins Act came as something of a shock, therefore, to both the vocational education community and to OVAE and the Department, and as will be seen, they have not readily been digested, much less reflected in fiscal or administrative practice.

In its clearest expression of the additivity goal, Congress stated unambiguously in the Perkins Act its desire to establish *fiscal and service differentials* within vocational education in favor of handicapped and disadvantaged students. Federally funded supplemental services for handicapped and disadvantaged vocational students are to be over and above the services available to "regular" (i.e., nonhandicapped and nondisadvantaged) students in the same or similar programs (P.L. 98-524, Sec 201(c)). Thus, if federal grants work as intended, total outlays for vocational education of the handicapped and disadvantaged by each grantee should exceed outlays for like numbers of regular vocational students by the amount of earmarked federal aid plus required nonfederal matching funds.

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[5] Although all Perkins grants are nominally subject to the statutory provision that federal aid must "supplement, not supplant" the state and local funds that would otherwise have been expended on federally aided activities, this provision, as explained in detail later, has generally gone unimplemented and unenforced. Moreover, Congress has indicated explicitly, in connection with grants for some target groups other than the handicapped and disadvantaged, that grantees *need not* use federal aid solely to pay for excess costs of federally assisted programs.

[6] The excess cost rule, prior to the Perkins Act, appeared in program regulations but not in legislation, and it applied to costs of serving the handicapped and disadvantaged in mainstreamed settings but not to costs of serving them in separate programs (see Chapter 4).

What is less clear in the law is whether Congress also intended federal aid for handicapped and disadvantaged vocational students to be supplementary in another sense--namely, additive to what *would have been* provided to the same students in the absence of federal aid. In some instances, this would require much more of state and local agencies than simply maintaining fiscal and service differentials. For instance, an LEA that routinely provides certain supplementary services to its disadvantaged vocational students (say, special guidance and counseling) would be obliged, according to this second concept of additivity, to continue providing such services at its own expense and, in addition, to provide another layer of supplementary services with Perkins funds. The presence in the Act of the requirement that federal funds must "supplement...State and local funds that would in the absence of such Federal funds be made available..., and in no case supplant such State or local funds" (P.L. 98-524, Sec. 113(b)(16)) seems to indicate that Congress did intend Perkins funds to be additive in the second sense as well as the first, but that is not the prevailing administrative interpretation and considerable ambiguity remains. Here, moreover, the question is not just of Congressional intent but also of how strictures against supplanting may be interpreted, implemented, and enforced (these matters are considered in detail in Chapter 6).

A closely related question of purpose is how Congress viewed the relationship between Perkins grants and the obligations that other federal laws impose on states and LEAs to serve their handicapped and disadvantaged students. Like the Perkins Act, some such laws, most notably the Education of the Handicapped Act, require supplementary services for certain special-need students. Did Congress intend that Perkins funds would provide still more supplementary services, over and above those already required, or can Perkins funds be used to defray the costs imposed by other federal statutes? This is an important issue that has not yet been resolved.

Perhaps the greatest mystery regarding Congressional purposes under the Perkins Act revolves around the mandate in Section 204(c) of the Act to provide certain specified services to all handicapped and disadvantaged vocational students. Views about the proper interpretation of this provision vary drastically. Some who participated in drafting the Act see in this mandate the birth of a fundamental new strategy, focusing on standards of service rather than on required uses of funds. Others, including OVAE and the Department, seem to see it as an aberration, an afterthought, or a minor appendage to the law. If the former view eventually prevails, a new kind of service entitlement for disadvantaged enrollees in vocational education will have been created, and the fiscal consequences could be large; in this respect, a great deal may ride on how this question of Congressional intent is decided.

Because there are uncertainties about important aspects of Congressional intent, one cannot proceed as if all the resource allocation and targeting provisions in the Act were instruments designed to achieve well-defined goals. Instead, one must constantly be aware, while assessing the statutory and regulatory provisions, that objectives are ambiguous and sometimes in dispute. It is important to consider alternative interpretations of goals and the adequacy of the Perkins mechanism to accomplish each. This necessarily complicates and extends the assessment and makes some findings conditional on particular readings of what Congress intended; but short of being arbitrary or reading the collective Congressional mind, it is hard to see how the problem can be avoided.

RESOURCE ALLOCATION AND TARGETING PROVISIONS

To ensure that federal grants are properly used and distributed and that services of the desired kinds and in the desired amounts are indeed provided to the designated beneficiaries, Congress established in the Perkins legal framework a set of resource allocation and targeting provisions. The bulk of this report is devoted to analyzing these provisions and their efficacy in producing the intended results. The main provisions (with brief observations regarding pertinent issues) are the following:

Definitions of Target Groups and Permitted Uses of Federal Funds. The statute and the regulations provide definitions of the two target groups, handicapped and disadvantaged vocational students, and specify the kinds of resources and services that may be procured with Perkins funds. As will be seen, the target group definitions, especially the definition of disadvantaged, are very broad and elastic, raising questions about which students and how many students are supposed to be served with federal aid.

The Supplemental Services and Excess Cost Rules. These rules stipulate that the Perkins grants earmarked for the handicapped and disadvantaged can be expended only for the federal share of supplemental services provided to, and excess costs incurred for, handicapped and disadvantaged enrollees in vocational programs. They are the most explicit and potentially the most effective provisions in the Act for promoting the additive use of federal funds, but there are concerns about how they have been interpreted and implemented and, especially, about how excess costs are to be measured.

The Matching Requirement. The Perkins Act requires dollar-for-dollar matching, from state and local funds, of the federal funds expended for excess costs of programs for the handicapped and disadvantaged. In theory, this could help to channel additional resources to target-group students, but it is questionable whether the particular formulation of matching under Perkins is suitable for achieving that result.

The Supplement, Not Supplant Requirement. The stricture against using federal funds to supplant (substitute for) state and local funds nominally applies to all grants supported under the Perkins Act, not just grants for the handicapped and disadvantaged. This provision of the statute has never been implemented seriously, however, nor applied explicitly to grants for the handicapped and disadvantaged, so the question is not whether it is effective but how it could be made effective in the future.

The Equal Access Requirement. The statute requires Perkins grantees to ensure that handicapped and disadvantaged students have equal access to the full range of vocational programs and activities, but equal access has not been defined operationally and administrative interpretations have made the guarantee essentially null and void. The issue, therefore, is whether and how the promise of equal access might be realized in the future.

The Service Mandates. A statutory provision requires LEAs to provide to each of their handicapped or disadvantaged vocational students (a) an assessment of needs, (b) special services designed to meet those needs, and (c) certain guidance and counseling services. The question is unsettled of whether this provision should be construed narrowly, as one affecting only grantees' uses of federal funds, or broadly, as establishing an entitlement to adequate, individually designed vocational education services.

The Fund Distribution Mechanism. The Act prescribes formulas both for apportioning Perkins funds among states and for distributing the funds set aside for the handicapped and disadvantaged among LEAs and postsecondary institutions within states. There are concerns about the rationality and equity of the distributions and also about whether the intrastate distribution process is workable and being carried out as Congress intended.

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All the provisions enumerated above are examined, individually and in detail, in the following six chapters of the report. Each chapter describes a provision, or group of related provisions and explains how it evolved; offers interpretations, including multiple and conflicting interpretations where necessary; assesses the likely effectiveness of the provision in promoting the intended uses and targeting of Perkins funds; examines other implications and effects; identifies problems of design, implementation, and enforcement; and discusses possible changes in, and alternatives to, the existing resource allocation and targeting mechanisms. The final chapter in this part of the report sums up the main findings and reviews the policy options, including both options within the existing Perkins framework and broader changes in strategy.

3. TARGET GROUP DEFINITIONS, STUDENT SELECTION, AND PERMITTED USES OF FUNDS

A necessary first-step in assessing whether federal funds are likely to be used as intended is to establish what the intended uses are. In the case of aid to the handicapped and disadvantaged under the Perkins Act, uses have been defined mainly in terms of the intended target groups or beneficiaries--that is, by specifying who qualifies as a handicapped or disadvantaged vocational education student. Only secondarily has Congress attempted to specify what resources or services federal funds are to buy, and the restrictions in this regard are very loose. Perkins grants for the handicapped and disadvantaged are categorical, then, primarily in that they are earmarked for particular categories of students. This chapter examines the target group definitions, the definitions of permitted uses of federal funds, the implications for resource allocation and targeting, and a number of policy options.

THE DEFINITIONS OF THE TARGET GROUPS

The funds earmarked for handicapped and disadvantaged vocational students amount to 10 percent and 22 percent, respectively, of Perkins basic grants to states, or about $76 and $168 million, respectively, in FY 1989.[7] An important influence on how these funds are allocated and used is how the two target groups are defined. The definitions of "handicapped" and "disadvantaged" are considered first, followed by the definition of "vocational student."

The Definition of "Handicapped"

The Perkins definition of a handicapped student is essentially the same as the standard definition used under the federal Education of the Handicapped Act, except that a clause has been added to make the definition specifically applicable to vocational education. The definition given in the Perkins regulations (34 CFR, Sec. 400.4) is that

> "Handicapped", when applied to individuals, means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or persons with specific learning disabilities, who by reason thereof require special education and related services, *and who, because of their handicapping condition, cannot succeed in the regular*

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[7] These percentages, specified in Section 202 of the Act, are of the funds that remain after states have deducted the amounts permitted for state administration (7 percent, or in some cases slightly more, of the total funds appropriated for basic state grants) under Section 102(a)(1), as amended in the Technical Amendments of November 1, 1985).

> *vocational education program without special educational assistance* (emphasis added).[8]

Although this definition is intended to cover both secondary and postsecondary handicapped students, there are necessarily differences in applying it at the two levels because the procedures already in place for identifying the handicapped in LEAs have no direct counterparts in postsecondary institutions.

At the secondary level, deciding which students have the impairments enumerated in the definition is generally not the responsibility of vocational educators. States and LEAs are required under the Education of the Handicapped Act to identify all handicapped elementary and secondary school students, and special education staff and other specialists (e.g., medical personnel and psychologists) are supposed to participate in making diagnoses.[9] Such determinations are made without regard to whether a student enrolls in vocational education or in an academic or general program.

Where vocational educators may play a role is in making the determination called for by the emphasized clause in the definition quoted above--namely, whether a student with a handicapping condition who enrolls in a vocational program requires special assistance to succeed. It is not clear how decisive this role can be. Handicapped students who enroll in vocational programs, like all other handicapped secondary students, are entitled to individual education plans (IEPs) setting forth the services they are to receive. The procedures for developing IEPs, specified by regulation, require the participation of parents, teachers, and special educators.[10] The Perkins Act stipulates that services provided under the Act are to be included, when appropriate, in the IEPs and that "vocational education planning for handicapped individuals will be coordinated between appropriate representatives of vocational education and special education" (P.L. 98-524, Sec. 204(a)(3)). The latter seems to mean that vocational educators should participate in developing the IEPs for students who enroll in vocational programs.[11] Thus, vocational educators may have a voice, but not necessarily the deciding voice, in determining which enrollees need special assistance and thereby qualify as handicapped vocational students under Perkins.

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[8] The definition given here is the same in most respects as the general definition given in regulations under the Education of the Handicapped Act (34 CFR, Sec. 300.5(a)), except for the addition of the emphasized clause. Other differences include the substitution of "speech and language impaired" in Perkins for just "speech impaired" and an explicit reference in regulations under the Handicapped Act to procedures for evaluating children. The latter regulations, however, supplement the general definition with specific, more detailed definitions of all the individual handicapping conditions (34 CFR, Sec. 300.5(b)).

[9] The regulations pertaining to the Education of the Handicapped Act set forth a variety of procedural safeguards for ensuring that the interests of handicapped children are protected in the evaluation and identification process; see 34 CFR, Secs. 300.530-300.532.

[10] These requirements are spelled out in detail in 34 CFR, Secs. 300.340-300.346.

That there is a federally prescribed process for identifying the handicapped does not imply, however, that the number of handicapped vocational students in a state or LEA is predetermined by the federal rules. State and local authorities have discretion to set evaluation standards and practices (subject to the "due process" protections of the Education of the Handicapped Act). Interstate variations in the percentages of children identified as handicapped and, especially, in percentages identified as having particular impairments, such as "specific learning disabilities," indicate that these practices are nonuniform and that states can influence their counts of handicapped students.[12] Perhaps most important, states and LEAs can influence the rates at which handicapped students enroll in vocational programs, both directly through guidance, recruitment, and placement and indirectly through decisions about program offerings and program designs.[13] Thus, there is clearly not a "given" population of handicapped, vocational, secondary school students to be served with federal funds.

How the definition of handicapped applies at the postsecondary level is uncertain. Postsecondary institutions generally are not subject to the same obligations as LEAs to identify and evaluate all their handicapped students, to operate special education programs, or to develop IEPs. Thus, the simple operational definition of a handicapped student that applies at the secondary level--a student receiving special education services under an IEP--is not meaningful at the postsecondary level. Moreover, while the definitions of some handicapping conditions, such as visual, hearing, and orthopedic impairments, can be carried over unchanged to the postsecondary level, other categories do not have as obvious counterparts. For instance, more than two-thirds of all the elementary and secondary students identified and served as handicapped are classified as having either speech impairments or "specific learning disabilities," but student classifications and services under these headings are far less common in postsecondary institutions. Two reasonable inferences, given the lack of formalized, mandatory identification procedures and the limited transferability of the definitions of some handicapping conditions, are that (1) there is greater definitional flexibility at the postsecondary level, and (2) smaller percentages of postsecondary than secondary students are likely to be labeled handicapped.[14]

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[11] How this is supposed to work is a little mysterious, since it is within the IEP process that decisions would presumably be made about whether a particular handicapped student will enroll in vocational courses. It is unclear, therefore, at what point vocational educators are to become involved in designing programs for handicapped individuals who may or may not become vocational students.

[12] Data on percentages of students identified as handicapped are presented in detail (with breakdowns by type of handicapping condition and type of placement) in annual reports to Congress prepared by the Department of Education. See, e.g., U.S. Department of Education, Office of Special Education and Rehabilitative Services (1988).

[13] Requirements in the Perkins Act that handicapped and disadvantaged students and their parents be informed of vocational education opportunities (Sec. 204(b)) and that such students be afforded equal access in recruitment, enrollment, and placement (Sec. 204(a)) can be viewed as enhancing the power of such students and their parents to decide about enrolling in vocational programs. To the extent that these provisions are implemented, they are likely to reduce the influence of vocational educators and administrators over how many handicapped individuals become vocational students.

The Definition of "Disadvantaged"

The Perkins definition of disadvantaged, unlike the definition of handicapped, is peculiar to the federal vocational education program. The definition given in the regulations is (from 34 CFR, Sec. 400.4):

> "Disadvantaged" means individuals (other than handicapped individuals) who have economic or academic disadvantages and who require special services and assistance in order to enable them to succeed in vocational educational programs. The term includes individuals who are members of economically disadvantaged families, migrants, individuals who have limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (where the grade "A" equals 4.0), or fails to attain minimal academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.[15]

The term "individuals who are members of economically disadvantaged families" in the foregoing definition is itself defined in the same section of the regulations as follows:

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[14] Another reason that the percentage handicapped is likely to be smaller at the postsecondary level is that many postsecondary enrollees who might qualify as handicapped may prefer to be considered and treated as regular students and therefore may not apply for special services to which they might be entitled by virtue of handicapping conditions.

[15] The statutory definition (P.L. 98-524, Sec. 521) does not include the three specific criteria of academic disadvantage cited here. These were listed as suggested criteria in the report of the House-Senate conference committee on the Perkins Act (Conference Report on H.R. 4164, Congressional Record--House, 98th Congress, 2nd Session, H 10757) and incorporated by OVAE/ED into the regulations.

> **"Economically disadvantaged family or individual" means a family or individual which the State board identifies as low income on the basis of uniform methods that are described in the State plan. A State must use one or more of the following standards as an indicator of low income:**
> **(1) Annual income at or below the official poverty line established by the Director of the Office of Management and Budget.**
> **(2) Eligibility for free or reduced-price school lunch.**
> **(3) Eligibility for Aid to Families with Dependent Children or other public assistance programs.**
> **(4) Receipt of a Pell Grant or comparable State program of need-based financial assistance [sic].**
> **(5) Eligibility for participation in programs assisted under Title II of the JTPA [Job Training Partnership Act].**[16]

Thus, the class of individuals potentially eligible for services financed with Perkins grants for the disadvantaged includes all enrollees in vocational programs who belong to any one or more of the following categories:

- Students from economically disadvantaged families, identified by any one or more of the five criteria listed above,
- Migrants
- Individuals with limited English proficiency
- Dropouts, and individuals identified as "potential dropouts"
- Academically disadvantaged individuals, identified by low scores on standard tests, low secondary school grades, or failure to attain minimum academic competencies[17]

The definition of disadvantaged also includes essentially the same qualifying clause as the definition of handicapped: students must not only fall into one of the above-listed categories but must also "require special services and assistance...to succeed in vocational educational programs." State and local authorities can apply this standard more flexibly to the disadvantaged than to the handicapped, since decisions about the disadvantaged are not subject to IEP procedures or other federal procedural rules. One OVAE official interviewed for this study explained that deciding who is disadvantaged often boils down, in practice, to identifying students who are "having trouble" in their vocational education courses. This suggests that vocational educators enjoy very broad discretion to decide which enrollees with disadvantaging conditions will actually be deemed eligible to receive Perkins-funded services.

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[16] The statutory definition says only that economically disadvantaged means "families or individuals who are determined by the Secretary to be low-income according to the latest available data from the Department of Commerce" (P.L. 98-524, Sec. 521(20)). In its notice announcing the final Perkins regulations, ED justified the establishment of multiple standards, some not based on Department of Commerce data, by citing precedent in using substitute data under the VEA, language in a Senate report endorsing flexibility and the use of existing student counts, and considerations of administrative feasibility (50 FR 33270-71).

[17] In a response to a comment on the regulations, ED indicated that (1) a state must use one or more of the three criteria of academic disadvantage contained in the definition, and (2) states may set the cut-off points of the criteria lower but not higher than the levels stated in the definition--that is, a state may use a test-score cut-off point at or below the 25th percentile and a GPA cut-off point at or below 2.0 on a 4.0 scale (50 FR 33270).

There seems to be some confusion in the Perkins Act regarding how, when, and by whom determinations are to be made as to which students potentially classifiable as disadvantaged (or handicapped) need special vocational education services. In particular, there is an inconsistency between the official definition of "disadvantaged" in Sec. 521 of the Act and the use of the same term in Sec. 204, which says that every disadvantaged (and handicapped) individual who enrolls in a vocational program is entitled to certain specified services, including information on vocational opportunities and an assessment of needs. According to Sec. 521, someone is disadvantaged if he or she has at least one of the academic, economic, or other disadvantaging conditions enumerated in the regulation *and* if he or she requires special services or assistance. However, the logic of Sec. 204(c) requires that certain services, especially the aforementioned assessment, must be made available to students with disadvantages before a determination has been made of which students require special assistance in vocational education. Presumably, Congress intended to require assessments for all vocational students with disadvantaging (or handicapping) conditions. Making this explicit would help to clarify the procedure for deciding who is eligible for services for the disadvantaged under the Act.

The Definition of "Vocational Student"

To define the target groups, one must establish not only which students are handicapped or disadvantaged but also which qualify as vocational students, or enrollees in vocational programs. The statute and regulations refer to such students in several ways: Sec. 201(c) of the Act refers to "individuals in vocational education"; Sec. 204(c) uses the phrase "each student who enrolls in vocational education programs"; and Sec. 203, which prescribes intrastate fund distribution formulas, refers to handicapped and disadvantaged students "served in vocational education programs." Unfortunately, none of these terms has been given a precise definition. In particular, it is not clear whether the label "vocational student" is to be reserved for those who enroll in coherent, occupationally oriented programs or "concentrate" to some specified degree in vocational studies or whether it also covers those whose involvement with vocational studies is more limited and casual.

The statutory definition of "vocational education" provides a hint as to how Congress may have intended "vocational student" to be defined, but this hint was not taken by the regulation writers. According to Sec. 400.4 of the Act,

> "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agricultural arts, and trades and industrial occupations, or for additional preparation for a career in those fields, and in other occupations requiring other than a baccalaureate or advanced degree....

Furthermore, the only services that are considered part of an "organized education program" according to this definition are those covered by the phrase, "instruction, including career guidance and counseling, related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from that training" (ibid). One could infer from this language that the intended beneficiaries of Perkins funds are students enrolled in organized educational programs aimed at training for occupations, not those who merely enroll in individual courses labeled "vocational" or who pursue such nonoccupational purposes as developing personal or leisure skills. OVAE/ED has not made this interpretation, however, nor any other. Instead, it has left it to each state to decide who is a vocational student. According to several current and former OVAE officials with whom the issue has been discussed, this means that a state could choose to include every student who enrolls in even a single vocational course (even, say, a high school typing class) and thus to count as "vocational enrollees" all but a minor fraction of the state's high school population.

THE DEFINITION OF PERMITTED USES OF FUNDS

The Perkins Act places only minimal restrictions on the types of resources or services on which federal aid for handicapped and disadvantaged vocational students may be expended. The main statutory (and identical regulatory) language on the subject is that funds shall be used

> only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for handicapped [disadvantaged] individuals to participate in vocational education (P.L. 98-524, Secs. 201(c)).

The phrase "staff, equipment, materials, and services" excludes very few objects of expenditure. The only items that explicitly cannot be paid for with Perkins grants for the handicapped and disadvantaged are "construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land" (P.L. 98-524, Sec. 521(32)).

As to types of services, "vocational education" is defined in Sec. 400.4 of the Act to include

> (1) instruction, including career guidance and counseling, related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from that training; and
> (2) the acquisition, including leasing, maintenance, and repair, of instructional equipment, supplies, and teaching aids.

The regulations also provide that a grantee

> may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made (34 CFR, Sec. 401.93(a)(2)).

In addition, it appears to be the view in some quarters, although there is disagreement on the point, that grantees may also expend Perkins grants for the handicapped and disadvantaged for indirect costs of programs, charged at state-approved indirect cost rates.

The apparent restriction that the staff, equipment, etc. referred to in Sec. 201(c) must be specifically for supplemental *vocational* education services is eased by language elsewhere in the law that allows Perkins funds to be expended for

> basic skills instruction for vocational education students which is related to their instructional program, if the State board determines that the instruction is necessary to carry out the purposes of the Vocational Education Opportunities Program (P.L. 98-524 Sec. 201(h)(1); 34 CFR 401.58(a)(1)).

Thus, funds may be used for instruction in vocational courses or in "related" basic skills subjects, for guidance and counseling, for equipment and materials, for administration of all the above, and possibly for other categories of indirect costs. In sum, except for the ban on construction and certain other capital outlays, decisions on what resources and services to provide to handicapped and disadvantaged vocational students are left entirely to the states, LEAs, and postsecondary institutions that receive federal grants.

The other kinds of restrictions contained in the statement of permitted uses in Sec. 201(c)-- in particular, that the resources or services provided must be "supplemental or additional" and "not provided to other individuals in vocational education," are more significant for targeting. They are considered separately and in detail in the discussion of the supplemental services and excess cost requirements in Chapter 4.

IMPLICATIONS FOR RESOURCE ALLOCATION AND TARGETING

How the eligible beneficiaries and the permitted uses of federal aid are defined obviously affects the targeting of Perkins funds. In particular, the elasticity of the target-group definitions, most notably the definition of disadvantaged, is an important consideration in judging the likelihood that the persons who receive Perkins-funded services will be the ones Congress intended to help. This discussion addresses some of the major problems raised by the present definitions and, where appropriate, suggests possible definitional changes and other policy options. Some additional implications of the definitions are discussed in later chapters in connection with particular Perkins fund allocation and targeting provisions.

Definitional Elasticity and State-Local Discretion

That the definitions of the target groups are elastic means, first of all, that Perkins funds set aside for the handicapped and disadvantaged have *not* been earmarked for predetermined, federally designated sets of beneficiaries. Congress has defined handicapped and, especially, disadvantaged vocational students so flexibly that state and local authorities have broad discretion to decide which students and how many students will be deemed eligible to receive federally funded services. This complicates the task of assessing the provisions for controlling the uses of federal funds under the Act. It means that one must consider not only whether the Perkins rules are adequate to channel federal funds to particular target groups but also whether the target groups themselves are likely to be defined as Congress intended, given the degree to which the definitions are under state control. In other words, the make-up of each target group must be viewed as a program outcome rather than as some of the "givens" that the program is to address.

The present federal definition of disadvantaged is so flexible that a state may be able to label, at its discretion, anywhere from a minor fraction (20 percent or less) to a substantial majority (say, 60 percent) of its vocational students as falling into the disadvantaged category. To see why, consider the options available to states that would like to construe the definition either as narrowly or as broadly as possible (various incentives for narrowing or broadening the definition are discussed later). To keep the number of secondary-school disadvantaged students small, a state would pick only one of the narrower of the five authorized criteria of economic disadvantage--most likely, eligibility for AFDC, which would cover perhaps one out of eight secondary students.[18] In addition, the state would choose only one of the three criteria of academic disadvantage and apply a low threshold level to that criterion. For example, the state might choose the criterion of scoring in the lowest decile on a standard achievement test. The same state would also define narrowly (or ignore) the vague "potential dropout" category. Taking into account the overlaps among low-income, low-performing, and LEP students, this approach would probably yield a total disadvantaged count of only about one-fifth of high school-level vocational enrollees. Moreover, once students with economic or academic disadvantages have been identified, the number qualifying for Perkins-funded services can be reduced by applying the condition that beneficiaries must require special services or assistance to succeed in vocational education. A state wanting to minimize the number of eligible students could adopt a stringent, near-literal definition of that requirement. An LEA or a postsecondary institution, in the absence of state rules to the contrary, could do the same. Thus, there is effectively no floor under the percentage of vocational enrollees that states and grantees may label "disadvantaged" under Perkins.

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[18] Most of the figures used to make the calculations in this section were supplied by members of the NAVE staff. They are not precise, and some are only rough estimates, but that is sufficient to support the order-of-magnitude comparisons presented here.

A state wanting to designate a high percentage of secondary vocational students as disadvantaged would behave oppositely in each respect. It would apply multiple criteria of economic disadvantage and all three criteria of academic disadvantage, setting the cut-off points for the latter at the upper bounds allowed by the regulations. It would encourage LEAs to be creative in identifying potential dropouts; it would interpret liberally the criteria for labeling students "LEP"; and, of course, it would construe "requiring special services or assistance" loosely, so that few otherwise-eligible students would be screened out. To appreciate how many students could be considered disadvantaged, consider that a single criterion, having a grade-point average (GPA) below 2.0 on a 4.0 scale, covers more than one quarter of all high school students nationally, and probably a larger percentage in states with heavy concentrations of poor and minority pupils. This percentage could be expanded, perhaps by another 5-10 percentage points, by including students with GPAs better than 2.0 but who score below the 25th-percentile level on standard achievement tests and/or fail state minimum competency tests. It could be inflated further by counting students who have dropped out or who qualify under a loose definition of potential dropouts, perhaps to a total of 40-50 percent in some states. The target group could then be enlarged further by adding students who are not academically disadvantaged but who are eligible for free or reduced-price school lunch or for AFDC and who are migrants or have limited proficiency in English. Assuming, conservatively, that the nonacademic criteria add another 10-15 percentage points to the group labeled academically disadvantaged, it is apparent how the so-called disadvantaged category could be expanded to include a clear majority of some states' vocational enrollees.

It is not clear how the criteria of disadvantage apply to postsecondary students, as they seem to have been formulated mainly with high school students in mind. The regulations do not stipulate, for example, whether a state must select the one criterion of economic disadvantage that applies specifically to the postsecondary level, receipt of a Pell Grant, or whether it may choose only criteria that apply mainly or exclusively to secondary students, such as eligibility for free or reduced-price school lunch. The latter interpretation would allow a state to claim zero economically disadvantaged postsecondary students, if it so chose.

The Pell-grant criterion, incidentally, has an important flaw as an indicator of economic disadvantage. Whether a student qualifies for a Pell grant depends not only on the student's (or the student's family's) income but also on the cost of the institution that the student attends. Because of the role played by the latter factor, receiving a Pell grant does not necessarily indicate that a student comes from an economically disadvantaged background. Therefore, the Pell criterion may bring into the target group students not in the low-income stratum intended to benefit from Perkins disadvantaged set-aside funds.

As to academic disadvantage, one can read the rules to permit the use at the postsecondary level of criteria analogous to those specified for the secondary level.[19] Counting both students with GPAs below would and students who fail to maintain minimum academic competencies (somehow defined) would bring in a substantial (but unknown) fraction of postsecondary vocational enrollees. If the state were interested in maximizing its count of postsecondary disadvantaged, it could use these academic criteria in combination with the criterion of receiving a Pell Grant. The latter covers about 12 percent of all junior college enrollees, and probably a larger percentage of vocational enrollees, many of whom would probably not be included under the low-GPA criterion. Thus, it might be possible to include a fairly large fraction, though not as large as one-half, in most cases, of postsecondary vocational students in the disadvantaged category.

The elasticity of the definition of "disadvantaged" is reinforced by the elasticity of the category of "vocational students." A state that chose to include in the latter anyone enrolling in one or more vocational courses in a given year could classify as many as 80 percent of all secondary students as "enrollees in vocational education." In contrast, it has been estimated that only about 36 percent of high school students take as many as 6 credits of vocational education (National Assessment of Vocational Education, 1988). Therefore, the choice between an all-inclusive definition or one limited to vocational "concentrators" could alter by more than a factor of two the number of students potentially eligible for Perkins-funded services. Moreover, since the individuals who qualify under a loose definition of vocational student are unlikely to be distributed among LEAs and postsecondary institutions in the same manner as individuals who qualify under a more restrictive definition, the choice of a definition is also likely to affect the distribution of Perkins funds under the prescribed intrastate distribution formula.

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[19] In response to a suggestion that the regulatory definition of disadvantaged be changed to deal specifically with postsecondary students, ED stated that this change was unnecessary because "the criteria in the definition of 'disadvantaged' are sufficiently broad that States may adjust the criteria to apply to either secondary or postsecondary settings" (50 FR 33269).

That the definitions are elastic means that grantees are likely to choose their target groups in light of the consequences thereof, specifically including consequences stemming from other provisions of the Act. It follows that one cannot assess these other provisions (or alternatives to the present provisions) adequately without taking into account how they influence state and local behavior in identifying target students. For example, the Perkins excess cost and matching rules may induce grantees to label large numbers of students disadvantaged so that excess costs can more easily be identified, while the service mandate provisions in Sec. 204(c) of the Act may induce LEAs to keep the number of disadvantaged small to minimize service obligations (these incentives are discussed in Chapters 4 and 7, respectively).

The present definitional looseness is problematic in several respects. The potential breadth of the disadvantaged target group is too great to make clear to interested parties which types of students are supposed to be helped with Perkins disadvantaged set-aside grants. State and local officials have wide discretion to decide which students and how many students to serve and possibly to choose participants to whom Congress would not assign high priority. That each state and, to a large extent, each grantee can define the target groups for itself also allows major disparities and inequities in access to federally funded services. In addition, as will be shown later, the elasticity of the definitions allows grantees to select target students in ways that defeat the purpose of other Perkins targeting provisions.

A number of steps could be taken to reduce the present definitional elasticity and to clarify for grantees who the intended beneficiaries are of the Perkins set-aside grants. The possibilities listed here reflect the assumption that both economic and academic criteria will be retained for identifying target-group members. They include options for tightening the definitions of economic disadvantage, academic disadvantage, and vocational student.

The definition of economic disadvantage could be narrowed and standardized by specifying preferred indicators for use at the secondary and postsecondary levels. Instead of allowing each state to select one or more indicators of low income from the present list of five, the rules would specify the indicator to be used at each level, and alternative indicators would be allowed only where data on the preferred indicator are lacking. Specifying an indicator for use at the postsecondary level is especially important, given the present confusion over which one should be used. Ideally, for reasons already mentioned, this should not be the present Pell grant indicator but rather one that reflects individual or family poverty more directly.[20]

Tightening the criteria of academic disadvantage is particularly important because it is their looseness that now creates the possibility of labeling a majority of students "disadvantaged." Any or all of the following changes in the rules would help to shrink the potential target population to more manageable proportions: (a) require states to use scores on statewide standard tests, where available, to identify academically disadvantaged students, allowing the use of grades (GPAs) only where such test scores are not available, (b) lower the thresholds attached to the test score and GPA criteria as necessary to reduce the target group to a reasonable minor fraction of vocational enrollees, (c) either eliminate or define operationally the criterion of failure to maintain minimum academic competencies, and (d) either provide a specific definition of "potential dropout" or abandon that criterion as unworkably vague. Here too, special clarification is needed of the criteria to be used at the postsecondary level: Should high school or postsecondary grades or test scores be used to identify academically disadvantaged postsecondary students? What constitutes failure to attain minimal academic competencies? Should institution-specific or statewide standards be applied?

Tightening the definition of "vocational student" would also help to narrow the target population, specifically by limiting it to students with more than a casual involvement in vocational studies. One approach would be to restrict eligibility for Perkins-funded services to students "substantially involved" in vocational studies--a category that might be defined to include (a) students identified as vocational education majors or concentrators (terms that would themselves require further definition) and (b) enrollees in organized programs or sequences of courses leading to certification in particular occupational fields. An indirect means of accomplishing more or less the same thing would be to focus on the activities in which federal funds are used rather than on the individuals who benefit. That is, grantees could be required to expend federal funds only on courses or activities that mainly serve vocational education majors or concentrators or that are parts of organized programs or course sequences leading to certification in particular occupational fields.

In addition to these relatively modest options, which are limited to changes within the existing set of definitions and rules, there are also alternative approaches to focusing federal aid more precisely. Two such options, examined immediately below, are to require that federal funds be concentrated in relatively large amounts on relatively few beneficiaries and to introduce explicit student selection priorities. A more drastic alternative, shifting from individual-level to school-level targeting, is discussed later in this chapter.

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[20] Although receipt of a Pell grant itself does not necessarily indicate that a student is economically disadvantaged, some of the data reported on applications for student financial aid (including Pell grants) could be used to construct a more appropriate indicator of student economic status. Thus, the data to construct a more valid indicator are already in the system.

Concentration Versus Dispersion of Federally Funded Services

One implication of the current expansive definitions of the target groups is that it is up to state and local authorities to decide whether to concentrate federal aid for the handicapped and disadvantaged on a relatively small percentage of vocational students or to disperse funds more broadly. This decision may be of limited consequence for the handicapped, who are entitled to "appropriate" services under the Education of the Handicapped Act regardless of the availability of Perkins funds, but it is important for disadvantaged vocational students, for whom Perkins grants may be the main, or only, source of special support. State and local authorities would have considerable control over the degree of concentration even if the target-group definitions were tightened, since the Act does not require spreading Perkins-funded services among all eligible students.[21] Nevertheless, grantees have considerably greater discretion in deciding how many students to serve out of the 50 to 60 percent of vocational students who might be deemed disadvantaged under the present definition than out of the, say, 20 percent who might qualify if the options outlined above were adopted.

From a fiscal perspective, setting aside 22 percent of Perkins funds for disadvantaged students has quite different significance if only 20 percent of vocational education students are deemed disadvantaged than if 60 percent are so classified. With only 20 percent in the target group, disadvantaged students would probably receive favored access to federally funded services; with 60 percent in the group that outcome is less certain. Note that 68 percent of basic state grant funds under the Perkins Act, including the whole 43-percent portion earmarked for program improvement, is for services that do not necessarily benefit the disadvantaged. Therefore, if the 22-percent set-aside for the disadvantaged were spread thinly, disadvantaged vocational students, as a class, might not receive even their proportionate share of total Perkins funds.

Congress appears not to have spoken on the issue of concentration versus dispersion of federally funded services; yet it is an important issue, given the scarcity of federal funds relative to the potential numbers of students to be served. It appears, based on very rough estimates, that Perkins aid earmarked for the disadvantaged could range from as little as $75 per FTE disadvantaged secondary vocational student if "disadvantaged" were defined broadly up to about $225 per FTE student if it were defined relatively narrowly.[22] Even the latter would amount to less than a 6 percent increment in outlay per FTE vocational student if funds were spread over the entire eligible population; $75 would represent less than a 2 percent increment in support per FTE student.[23] Whether funds are dispersed or concentrated, therefore, may make the difference between a program that has a small, marginal effect on services for a large number of students and one that adds significantly to services, albeit for only a minor fraction of the target group.

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[21] For the purpose of this discussion, no account is taken of the provision in Sec. 204(c) of the Act that mandates certain services for all handicapped and disadvantaged enrollees in vocational programs. That provision does seem to require dispersion of special services, federally funded or not, over the whole target group. Under some interpretations, such services could easily exhaust the Perkins funds earmarked for the handicapped and disadvantaged. As yet, however, it is not clear what Sec. 204(c) means in practice or whether it has been widely implemented. These issues are considered further in Chapter 7.

It is noteworthy in this regard that the Perkins Act contains no concentration requirement of the kind that has long been included in the federal compensatory education program. Under Chapter 1 of the Education Consolidation and Improvement Act (ECIA) of 1981, and especially under its predecessor, ESEA Title I, the seemingly innocuous requirement that projects be "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the educational needs of the children being served" (34 CFR, Sec. 204.20) was transformed into a "rule of thumb" regarding minimum levels of federal funding per pupil.[24] The doctrine gained wide acceptance, and was formalized by some state agencies, that federal aid would be concentrated sufficiently to produce about a 25 percent increment in spending per participating disadvantaged pupil, relative to per-pupil spending on regular pupils of the same LEAs.[25] Today, with $4 billion in outlays and some 5 million participants, the Chapter 1 program still provides a level of supplemental funding per participant equal to about 20 percent of average per-pupil expenditure. To produce a comparable level of support per participant, Perkins aid for the disadvantaged would have to be concentrated on somewhere between one-tenth and one-fourth of the potentially eligible population, depending on how loosely "disadvantaged" is defined. Establishing a concentration requirement is one of the options available for turning the Perkins grants for the disadvantaged into more targeted aid. Under this option, each grantee would be required to concentrate the available funds (including required nonfederal matching funds) on sufficiently few special-need students to make a "substantial" difference in the vocational education services available to each participant. The term "substantial" could be defined quantitatively in program guidelines (perhaps in terms of ranges rather than specific funding levels) and/or states could be directed to establish such guidelines, just as was done under the aforementioned compensatory education precedent. However, a concentration rule alone would not ensure proper targeting unless it was accompanied by principles for selecting the relatively few students to be served--the next item considered below.

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[22] The derivation of these estimates is as follows: There are about 12.5 million students in public secondary schools. Since 20 percent of all secondary school course enrollments are classified as vocational (NAVE estimate), this implies a total of about 2.5 million FTE secondary vocational students. The Perkins grants earmarked for the disadvantaged amounted to about $168 million in FY 1989. Assuming that two-thirds of this goes to secondary schools, total federal funds for disadvantaged secondary vocational students come to $112 million. Assuming that only 20 percent of the FTE vocational students qualify as disadvantaged, the amount of aid per FTE disadvantaged student would be $112 million/0.5 million, or $225. Assuming that 60 percent are labeled disadvantaged, this ratio would fall to $112 million/1.5 million, or $75 per FTE target group member.

[23] This is based on the very conservative assumption that total expenditure per FTE vocational student in secondary school is $4,000. Since that is roughly the amount now spent per pupil, on average, in all public elementary and secondary education, actual spending per FTE vocational student is almost certainly considerably higher.

[24] Interestingly, the requirement that projects must be of "sufficient size, scope, and quality" to give reasonable promise of meeting students' needs does appear in the Perkins Act but only in connection with program improvement, innovation, and expansion activities under Title II, Part B (P.L. 98-524, Sec. 252(c)). Even in that context, there is no indication that this provision has been taken to require, or encourage, any particular degree of concentration of Title IIB funds (see Chapter 10).

Priorities in Student Selection: The Severity of Disadvantages

The elasticity of the target-group definitions raises several questions about priorities in student selection, one of which is how choices are made, or should be made, between students with more severe and less severe disadvantages. A broad definition of disadvantage makes it less certain than a narrow definition that the students with the more serious disadvantages will be served. If a grantee can call a majority of its vocational students disadvantaged, it can select students in the mid-range of the need-for-assistance distribution to receive federally funded services under Perkins. It can "cream" the higher-performing or easier-to-serve students off the top of the broad disadvantaged category. It need not serve the more severely disadvantaged at all.

This is a matter of concern in light of evidence that states and LEAs, left to their own devices, are not always inclined to serve special-need students in vocational programs. The Senate Committee on Labor and Human Resources, reporting on the 1984 Senate bill that led to the present Act, stressed testimony that some states serve special-need students minimally, while others selectively place better vocational students in programs that lead to good jobs, relegating the disadvantaged to inferior offerings.[26] The Committee responded to this perceived problem by developing many of the protections for special-need students that now appear in the Act. What the Committee may not have realized, however, is that unequal treatment and "creaming" can take place *within* the disadvantaged group if the group is defined broadly enough. Thus, although the Perkins Act seeks to help the disadvantaged as a class, it does not prevent grantees from favoring moderately disadvantaged students over their more severely disadvantaged schoolmates.

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[25] A major 1976 study of the ESEA Title I legal framework cites federal guidelines calling for supplementary spending per pupil on the order of 50 percent of regular per-pupil outlay and various state guidelines and requirements establishing funding levels in the range of 25-50 percent of regular outlays (Silverstein, Schember, et al., 1976, 413-18).

More specifically, the Perkins Act neither prescribes student selection procedures nor requires priority for disadvantaged individuals having the "greatest need" for assistance. It contrasts, in this respect, with the federal compensatory education program under ECIA Chapter 1, in which both guidelines for pupil selection and priority for those in greatest need are long-established features. The Chapter 1 regulations outline a process for selecting program participants that "requires, among the educationally deprived children selected, inclusion of those children who have the greatest need for special assistance" (34 CFR, Sec. 200.51(a)(2)). The Title I language was stronger: "an LEA shall use Title I funds to serve children who...are identified and selected by the LEA...as currently having the greatest need of special assistance (34 CFR, Sec. 201.70, January 19, 1981). Such rules are designed to ensure, in situations where there is too little federal money to serve all members of the target group adequately, that services go to those who need them the most. The same principle could be applied, but never has been, to federal aid for disadvantaged vocational students.[27] Severity of need could be defined, in connection with such students, in terms of academic performance, students' levels of preparation for vocational training, and/or occupational or economic prospects.

If a requirement to serve the most disadvantaged first were included in the Perkins Act, the looseness of the definition of disadvantaged would be of less consequence. It would make little difference whether 20 percent or 60 percent of vocational students were classified as potential beneficiaries if federal funds sufficed to serve only 10 percent and if the 10 percent with the greatest needs had to be given priority. In this respect, tightening the definition of disadvantaged and assigning priority to the most disadvantaged are alternative remedies for the same problem.[28]

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[26] Senate Report 98-507, 98th Congress, 2nd Session, June 7, 1984, p. 7.

[27] The principle of serving those in greatest need is recognized in the Perkins Act only in connection with single parents and homemakers. Section 113(b)(7) stipulates that states, in serving that group, "will emphasize assisting individuals with the greatest financial need...," but no analogous principle has been applied to the other target groups.

Economic and Academic Disadvantage as Criteria for Selecting Students

A more fundamental issue raised by the present definition of disadvantaged concerns the appropriate roles of economic and academic disadvantage in determining whom to serve with Perkins funds. According to the present rules, a grantee is first supposed to identify vocational students who are either economically or academically disadvantaged or both and then to determine which of the students so identified require special assistance in vocational education. As already mentioned, OVAE officials report that some grantees short-circuit this process by considering only whether students seem to need special help in their vocational courses. The question of interest here, however, is not one of practice or compliance but rather whether the use of general academic criteria and, especially, economic criteria makes sense. In essence, this is a question about the purpose of funding supplemental services for disadvantaged vocational students.

There seem to be several possible rationales for wanting to target Perkins funds on the basis of economic disadvantage. One is that access to desirable vocational programs is likely to be limited in communities with large concentrations of low-income students or families. Such limitations may exist because the fiscal resources of such communities are inadequate to provide quality programs or because such communities do not receive their fair shares of local and state resources. In either case, allocating Perkins funds according to economic criteria (poverty, low income) would help to redress disparities and make services available to students who would otherwise be inadequately served. However, this rationale applies to the distribution of funds among places or schools, not to the selection of individual participants in programs.

The rationale for making economic disadvantage or poverty a criterion for serving individual students is less clear. Impaired access, at the individual-student level, seems to refer mainly to barriers to admission into, and successful performance in, vocational programs. To deal with this dimension of access, it makes sense, first, to address the problem of inadequate service provision in certain places, as discussed above, and, second, to channel additional resources and services to students who need extra help to participate effectively in high-quality vocational programs. But having low income, per se, is not a good indicator of needing the latter kind of help. While it is true that poor academic performance is generally correlated with poverty, this does not make it either necessary or desirable to select beneficiaries on the basis of individual poverty when direct measures of poor academic performance (low test scores, low grades) are available. Therefore, although the goal of helping those who would otherwise be unlikely to do well in vocational programs does seem to justify using some kinds of performance criteria for selecting individuals, it does not justify using economic disadvantage.

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[28] Note that no such option can be applied to handicapped vocational students (at the secondary level) because *all* such students are entitled to "appropriate" services under the Education of the Handicapped Act regardless of the availability of federal aid (the same applies to the previously mentioned fund concentration option as well).

A possible alternative rationale for selecting individual low-income students is the explicitly redistributional one that underlies compensatory education for the disadvantaged: because students from low-income families are less likely, other things being equal, to succeed economically, they need extra resources and services in school to compensate for the out-of-school advantages enjoyed by their more-advantaged peers. It is instructive, however, that the federal compensatory education program, though explicitly founded on redistributive goals, eschewed--in fact, forbade--using a poverty criterion to select individual participants. Indicators of low income are used under ECIA Chapter 1 to allocate federal funds among states, counties, LEAs, and even school buildings, but the selection of children to be served within each school is based solely on educational criteria.[29] The circumstances of the vocational education program are not entirely comparable--for one thing, there is now no income-based allocation of Perkins funds to schools (the proposition that there should be is discussed below). Nevertheless, it is hard to explain why, if pupil selection on the basis of poverty is unnecessary and undesirable in compensatory education, it should be deemed appropriate under the Perkins Act. There is no necessary relationship, especially at the postsecondary level, between someone's personal or family income and his or her need for the types of supplemental services to be provided with Perkins funds. Thus, the rationale for using poverty-related indicators to identify individual target group members is in doubt and merits reconsideration by Congress.

The rationale for using general academic disadvantage, or low academic performance, as a selection criterion also merits examination. Performing poorly in academic subjects or on standard tests that emphasize academic skills is not necessarily associated with difficulty in learning vocational subjects. It is true, of course, that students lacking pertinent basic skills are unlikely to perform well in certain occupational fields, but the connections between general and occupational skills are likely to be field-specific (i.e., some vocational fields are likely to require a certain level of mathematical proficiency, others a certain level of verbal proficiency, and so forth). The question, therefore, is one of specificity: should general academic performance be the criterion for target-group membership, or should more specific indicators of adequacy of preparation be considered in selecting the recipients of Perkins-funded supplemental services?

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[29] The rules for allocating Chapter 1 funds to LEAs are in 34 CFR, Secs. 200.21-200.23; those for selecting schools are in 34 CFR, Sec. 200.50; and those for selecting pupils are in 34 CFR, Sec. 200.51.

The foregoing points suggest that several alternative conceptions of the appropriate make-up of the disadvantaged target group should be considered. The status-quo arrangement is, of course, to retain the dual criteria of economic and academic disadvantage, which means, in effect, leaving it to each state to decide whether to serve economically or academically disadvantaged vocational students or some combination of the two. It is compatible with this approach, however, to tighten the criteria of economic and academic disadvantage, as suggested earlier, and/or to introduce the aforementioned requirements to concentrate funds and to serve those in greatest need first. One alternative to the status quo is to drop individual poverty as an eligibility criterion and define the target group on the basis of educational disadvantage only. This would respond to the criticism that singling out students for special assistance on the basis of their personal or family incomes is questionable and resolve the mystery of what special services are appropriate for students who are poor but have no academic problems. It should be noted, however, that this change would diminish the redistributive character of the Perkins disadvantaged set-aside grants and might be deemed to conflict with the Congressional intent of expanding vocational education opportunities for the economically disadvantaged.

An almost contrary alternative is to make both economic and educational disadvantage necessary conditions of eligibility for Perkins-funded services. Under this option, federal aid would be reserved for students who are (a) poor or from low-income families and (b) who have either limited access to vocational education or inadequate preparation for the available programs. This option would reaffirm the redistributive aspect of the federal purpose, while at the same directing Perkins-funded services to individuals with special educational needs.

Finally, a more radical alternative is, instead of continuing to focus on individuals, to earmark Perkins funds for *schools* with high concentrations of low-income students. Grantees would be required, under this option, to identify low-income schools, allocate their Perkins disadvantaged set-aside funds among them, and then, within each such school, deliver supplemental services to students selected according to educational criteria. This would meld the criteria of economic and educational disadvantage in much the same manner as under ECIA Chapter 1. Rules analogous to those of the latter program would have to be developed to guide the interschool allocations and to guard against fiscal substitution at the school-building level.[30] The intent would be to make the funds available either to expand and upgrade vocational offerings in the designated schools or to help students participate in vocational programs for which they would otherwise have been inadequately prepared.

That such disparate alternatives seem to have valid claims for consideration reflects basic uncertainties about the purposes of the disadvantaged set-aside grants under the Perkins Act. Is the purpose mainly remedial--to help individuals who are inadequately prepared for vocational programs--or is it mainly compensatory or redistributive--to shift resources in favor of students from low-income families. Only Congress can settle the issue, and the next reauthorization provides the opportunity to do so.

The Concept of "Needing Special Assistance to Succeed"

The requirement that students with handicaps or economic or academic disadvantages must also "require special assistance to succeed" to qualify for Perkins-funded services is written into the law, but it is difficult to apply and subject to abuse. Judgments about which students need special help to do well are inherently subjective, and admitting them into the student selection process effectively allows local vocational educators to select participants according to criteria of their own. A particularly troublesome possibility is that some grantees may turn the criterion around, asking not just "which students need special assistance to succeed?" but "which students, *given the levels of special assistance that the grantee intends to provide*, have a reasonable likelihood of succeeding?" The effect of the latter could be to divert Perkins funds away from students who have the most severe needs (and are most difficult to serve) and toward those who are the most likely to do well in standard vocational programs.

More important, neither the Congress nor OVAE/ED seems to have taken into account that whether a student needs special assistance to succeed depends on the particular occupational program in which that student enrolls. Even students with severe handicaps or disadvantages, if placed in sufficiently low-level, undemanding programs, might be said not to require special help to complete the programs successfully; hence, taking the "needs special assistance" clause literally, one would have to conclude that such students would not qualify for

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[30] This option comes in two versions, corresponding to two different assumptions about the intrastate fund distribution process. The more limited version, corresponding to the assumption that the present method of distributing funds to LEAs and postsecondary institutions will be retained, pertains only to allocations among schools within multischool LEAs. The more extensive version, which reflects the assumption that the present intrastate allocation process would be scrapped, calls for allocations of funds by the state directly to individual schools (including postsecondary schools) with the largest concentrations of low-income students.

Perkins-funded services. Thus, the criterion of requiring special assistance to succeed could again be used to deny resources to some of the students most in need.

More fundamentally, the idea that there is a certain subset of students who need special services to succeed--presumably in the programs in which they would have been placed anyway--reflects an overly narrow and static vision of how the handicapped and disadvantaged are to be helped with federal aid. The idea makes sense only if one assumes that patterns of student placement in programs should not themselves be altered by the availability of Perkins funds. A very different conception, and one arguably more in keeping with the Congressionally proclaimed "opportunity" goal, is that the availability of federally funded supplemental services should allow handicapped and disadvantaged students to enroll in and complete higher-level vocational programs than they would have been able to undertake otherwise. For instance, a student who, without special assistance, might have qualified only for a clerical skills program might, with that special assistance, qualify instead for a bookkeeping or business management program; or a student who, with no extra help, might have hoped only to prepare for a production line job, might, with such help, have a chance instead to become a skilled technician. Once one stops thinking of placements as predetermined and focuses instead on how placements may be upgraded, it becomes evident that "does this student need special assistance to succeed?" is not the right question. ("To succeed in what?" is the obvious reply.) One might better ask, "can this student, with appropriate special assistance, succeed in a more challenging or promising field than he or she would have been placed in otherwise?"

One alternative to the present provision would be a replacement based on more specific, less subjective educational needs. Eligible students might be defined, for example, as those who have inadequate preparation to perform adequately in high-quality vocational programs or in the vocational programs of their choice. It would be desirable, in conjunction with this option, to make clear that the Perkins equal access rules (see Chapter 7) bar grantees from denying admission to programs to handicapped or disadvantaged students who would have a reasonable chance of participating successfully if given the supplemental services provided for under the Act. Another alternative would be to eliminate the "needs special assistance" provision entirely but to inset into the Act explicit statements of how disadvantaged set-aside funds are to be used--namely, to expand vocational education offerings for the disadvantaged (in places where such students are concentrated) and to upgrade the placements of individual disadvantaged students, as discussed above.

Equity in the Distribution of Services

The elasticity of the present target-group definitions and student selection procedures also has implications for equity in the distribution of benefits under the Perkins Act.

Because state and local authorities have broad discretion in defining target groups and deciding whom to serve, student selection patterns are likely to vary markedly from place to place. A student who would qualify as handicapped or disadvantaged in one state, LEA, or postsecondary institution may not qualify in another. Students with similar disadvantages who are served by different LEAs or institutions within a state may receive widely varying amounts of supplemental resources and services. Even within a single LEA or postsecondary institution, students with disadvantages of comparable severity may be afforded unequal access to programs and unequal supplementary services within them. This disparate treatment of students with similar characteristics and problems can be viewed as a form of horizontal inequity--unequal treatment of equals.

Some such disparities are inevitable under a federal grant program that places decisions about whom to serve and how to serve them in the hands of state and local officials. They can even be considered signs of healthy diversity in responding to varying local circumstances. The issue is one of degree. Disparities can become so large that they eclipse the idea of a national program aimed at national, Congressionally defined purposes. Narrowing the definitions of handicapped, disadvantaged, and vocational student (or establishing student selection procedures and priorities) would reduce the scope for disparities, but narrowing them too much could inhibit the grantees' ability to respond flexibly and creatively to state and local problems. Whether the right balance has been set between flexibility and equity is an issue Congress should consider, in light of full information on the elasticity of the present definitions, during the next round of vocational education legislation.

Federal Neutrality Regarding the Services to be Provided with Perkins Funds

Finally, we need to examine certain implications of the present Perkins definition of permitted uses of federal funds. This definition, as explained earlier, is broad and unrestrictive. Local grantees (or states) have nearly total authority to decide what kinds of supplemental resources or services to procure for their handicapped or disadvantaged students and what types of vocational programs to support with the federal set-aside funds. The issue is whether this degree of permissiveness is desirable: Is the federal government's essentially neutral stance with respect to uses of Perkins grants conducive to achieving Congressionally defined vocational education goals? Consider, first, the implications of federal neutrality with respect to the types of resources and services to be provided to target-group students. The federal rules assert no preferences or priorities among such services as vocational instruction, basic skills instruction, and guidance and counseling or among such resource inputs as staff, materials, and equipment. The lack of prescriptiveness in these respects reflects the generally well-founded belief that decisions about such aspects of educational substance and program design are best made at the state and local levels. There is a serious problem, however: the playing field is not level. Other provisions of the Perkins Act, notably the supplemental services and excess cost rules and the service mandates, create incentives favoring (a) outlays for ancillary services and remedial basic skills instruction over outlays for augmented or improved vocational instruction and (b) outlays for equipment and materials rather than for other kinds of resources. Without going into details here (the incentives are analyzed in later chapters), the upshot is that the service mix may be distorted in ways that are neither educationally desirable nor preferable from the federal perspective. The problem can be dealt with in one of two ways: either by modifying the incentives or by redefining permitted uses of funds so as to limit or preclude what, from the federal point of view, are low priority outlays.

The statutory provision specifically authorizing grantees to expend Perkins funds on basic skills instruction is especially problematic in this regard. Although the statute says that such instruction must be "related" to students' vocational programs, this limitation is not reflected in any concrete manner in OVAE/ED regulations or guidelines. This means that an unbounded share of the federal dollars provided under the rubric of vocational education can be expended to teach remedial (or other) English and mathematics. For reasons to be explained later (see Chapter 6), spending for basic skills instruction is particularly likely to involve the use of Perkins funds to supplant funds that would otherwise have been provided from local, state, or other federal sources. But even apart from supplanting, there would remain the more basic question of whether substantial amounts of federal vocational education aid should be usable for purposes other than strengthening vocational education itself, particularly when there is larger-scale support from other sources for remedial and other basic skills instruction. A review is warranted, therefore, of whether the authority to spend Perkins funds on basic skills instruction should be retained, and if so, whether it should be retained in its present unrestricted form.

The neutral federal stance with respect to uses of Perkins grants also extends to allocations among vocational programs. Nothing in the Act distinguishes between programs or occupational fields that do and do not merit federal support. In particular, there is no indication that program quality is to be considered--no stipulation, e.g., that federal funds for the handicapped or disadvantaged should be channeled to "high level" or challenging programs, programs of demonstrated superior quality, programs that prepare students for growing or well-paying occupations, or the like. The lack of such specifications (even in the form of statements of intent) is worrisome in light of the evidence that special-need students are likely to be underrepresented, in the normal course of business, in vocational programs and fields with desirable attributes. Federal neutrality, in this context, could mean federal subsidization of the education of such students in relatively low-level, relatively unpromising vocational fields. It is at least arguable that the Perkins access goal, sometimes expressed as "improved access to quality vocational programs for individuals who are inadequately served," requires more positive standards with respect to the types of programs in which the handicapped and disadvantaged are served, partly at federal expense.

SUMMARY: FINDINGS AND POLICY OPTIONS

The single most important point brought out in this chapter is that the present definitions of the target groups, especially disadvantaged vocational students, are too broad and elastic either (a) to convey clearly to grantees which students are to be served with federal funds or (b) to ensure that the benefits of federal aid accrue to the students Congress intended. The definition of "disadvantaged" is expansive enough to embrace a majority of all high school vocational enrollees, making the class of potential beneficiaries too large to constitute, in any meaningful sense, a target group. Also, the term "vocational student" can be stretched to cover the vast majority of secondary and postsecondary enrollees, not just students enrolled in organized programs of occupational training.

The effects of definitional elasticity are exacerbated by the omission from the Perkins framework of two key fund allocation principles: (1) that priority should be given to students "in greatest need," and (2) that funds should be concentrated on few enough students to make a significant educational difference for participants. Absent such provisions, there are likely to be major disparities among grantees, and even among a grantee's schools and programs, in the numbers and kinds of students who are served with federal aid and in the amounts expended per participating student.

Apart from definitional looseness, there are conceptual problems with the three types of criteria--economic disadvantage, academic disadvantage, and "need for special assistance to succeed in vocational education"--stipulated for identifying disadvantaged students. The rationale for including students on the basis of individual economic disadvantage (poverty) is unclear and the relevance of general academic disadvantage is also questionable, since neither criterion is necessarily associated with difficulty in learning vocational skills. The stipulation that participants must "require special assistance to succeed" is the most troublesome, not only because it can lead to perverse selections of beneficiaries but also because it seems inconsistent with a major implicit purpose of federal aid--helping special-need students enroll in and complete higher-level vocational programs than they would have been able to undertake otherwise. It is urgent, therefore, to reconsider which criteria of target-group membership are appropriate, how they should be formulated, and how they may best be combined.

The target-group definitions appear to have been formulated mainly with LEAs and secondary schools in mind and are not readily applicable to postsecondary institutions. There is a need to specify more precisely what definitions of "handicapped," "economically disadvantaged," and "academically disadvantaged" are to be used at the postsecondary level.

The neutral federal stance with respect to the types of services and programs to be supported with Perkins handicapped and disadvantaged funds is a matter of concern, especially considering the incentives grantees face to favor ancillary services and/or basic skills instruction over vocational instruction. The authority to support basic skills instruction with Perkins funds particularly merits review because such spending is likely to involve supplanting and to divert resources away from improvement of vocational education per se. Finally, the lack of any provisions concerning the quality of federally aided programs raises doubts about whether the goal of "improved access to high quality programs" is likely to be achieved.

Most of the problems, and hence most of the policy options, discussed in this chapter have to do with the definition of the disadvantaged target group. Several options for changing the make-up of this target group are presented. They include options for dropping individual economic disadvantage as a criterion or, on the contrary, requiring that students have both low incomes and educational problems to be eligible. They also include the more radical option of shifting from targeting of individual students to targeting of low-income schools. Options are also outlined for tightening both the economic and academic criteria used to identify disadvantaged students, limiting the label "vocational student" to individuals seriously involved in vocational studies, introducing a concentration requirement and student selection priorities, and replacing with more appropriate requirements the stipulation that students must "require special assistance to succeed in vocational education" to be served with Perkins funds. Finally, suggestions are offered for respecifying the permitted uses of Perkins handicapped and disadvantaged set-aside funds in ways more likely to promote improved access of special-need students to high-quality vocational programs.

4. THE SUPPLEMENTAL SERVICES AND EXCESS COST PROVISIONS

Although the principle that federal funds should augment, or supplement, nonfederal funds theoretically applies to all Perkins grants, it is only in connection with the handicapped and disadvantaged programs that it has been translated into explicit, quantitative fund allocation requirements.[31] The key requirements are the supplemental services and excess cost rules set forth in Section 201(c) of the Act. In essence, these rules require that federal funds earmarked for handicapped and disadvantaged vocational students shall be expended only for services over and above those that regular vocational students receive and only to cover costs in excess of the costs of regular vocational programs.

Under the Perkins Act, the supplemental services and excess cost rules are closely tied to the requirement for state-local matching of federal aid for the handicapped and disadvantaged. State or local funds must match, dollar for dollar and on a statewide basis, the federal funds expended for costs of supplementary services. Logically, however, the supplemental services and excess cost provisions are separable from the matching provision. There can be, and have been, excess cost requirements without matching and vice versa.[32] This discussion refers, where relevant, to the state-local obligation to match the federal contribution to excess costs, but a full discussion of matching is deferred to the following section.

DESCRIPTION AND EVOLUTION OF THE REQUIREMENTS

Sections 201(c)(1) and 201(c)(2) of the Act contain the supplemental services and excess cost requirements pertaining to handicapped students and disadvantaged students, respectively. The requirements are repeated, with one addition to the wording, in Secs. 401.52 and 401.53, respectively, of the regulations.[33] These regulations (which are identical except that one pertains to the handicapped and one to the disadvantaged) read as follows:

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[31] The Perkins "supplement, not supplant" requirement (P.L. 98-524, Sec. 113(b)(16)), which applies to all grant programs funded under the Act, expresses the principle that federal aid is to be used only for supplementary services, but no regulations implementing this provision have ever been issued. See the discussion of the supplement, not supplant requirement in Chapter 7.

[32] Prior to 1976, there were matching requirements but no excess cost requirements in the federal vocational education program. Under the 1976 Amendments, grantees were required to match all federal aid for the handicapped and disadvantaged, but matching was linked to excess cost only in cases where handicapped or disadvantaged students were served in "mainstreamed" programs.

> **(a) A State shall use [federal] funds reserved for handicapped (disadvantaged) individuals...only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for handicapped (disadvantaged) individuals to participate in vocational education.**
>
> **(b) If the conditions of handicapped (disadvantaged) students require a separate program, each state may use these funds only for the Federal share of the costs of the services and activities in separate vocational programs for handicapped (disadvantaged) individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.**

The "federal share" of expenditures, referred to above, is set at 50 percent; that is, one state or local dollar must match each dollar of the federal contribution to excess costs (P.L. 98-524, Sec. 502(a)(3)(A) and 34 CFR 401.94(b)(iii)).

The foregoing statutory language, looked at in isolation, may appear to leave some doubt about whether the excess cost requirement applies to nonseparate ("mainstreamed") programs as well as to separate vocational programs for handicapped and disadvantaged students; however, the legislative history on this point is clear. The House bill that preceded the Perkins Act provided that, with respect to services and activities for both the handicapped and the disadvantaged, "[federal funds] may be expended only if such services and activities exceed the recipient's per-pupil expenditure for regular services and activities."[34] The Senate bill contained wording identical to that of paragraph (a) of the current regulations, but only with respect to funds for the handicapped.[35] The resolution of these differences in the conference committee was that

> House recedes with an amendment to apply the Senate *supplemental cost* language to both the disadvantaged and handicapped set-asides, except that the use of Federal funds for separate programs for either population shall only be

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[33] The item added in the regulations is clarification that the "regular" services to which supplemental services and excess costs are to be added are "comparable regular vocational education services" provided by the grantee. The statute failed to indicate that regular *vocational* services were to be taken as the base of comparison (see the comment at 50 FR 33261).

[34] H.R. 4164, 98th Congress, 2nd Session, Secs. 413(12)(A) and 413(13)(A).

[35] S.2341, 98th Congress, 2nd Session, Sec. 201(c).

> for expenditures in excess of per pupil expenditures [for regular services and activities].[36]

It is evident that the conferees understood the Senate language pertaining to the handicapped to constitute an excess cost ("supplemental cost") requirement; that the House bill stated an excess cost requirement explicitly; and that the final Act retained the Senate language and extended it to the disadvantaged, while, in addition, applying the House's excess cost language specifically to separate programs. It follows, then, that federal funds may be expended only to pay for supplemental resources or services *and* only to pay costs in excess of the costs of regular programs regardless of whether the handicapped or disadvantaged students are educated separately or mainstreamed.

The significance of the paragraph pertaining to separate programs (paragraph (b)) in the regulation quoted above is that it indicates the different kinds of cost comparisons required in the cases of mainstreamed and separate programs to demonstrate that the excess cost rule has been satisfied. If special-need students are "mainstreamed," the appropriate comparison is between costs attributable to the special-need students and costs attributable to the regular students in the same program; if special-need students are served in a separate program, the comparison is between per-student expenditures in that separate program and per-student expenditures in a comparable regular vocational program. The same excess cost principle applies, but the appropriate base of comparison depends on how the students are served.

The supplemental services and excess cost requirements did not appear in the law prior to the Perkins Act, yet they are not new to the federal vocational education program. An excess cost requirement, based on the concept that federal funds (plus required state-local matching funds) should be used only to pay for supplementary services, was created *by regulation* in 1977 following the passage of the Education Amendments of 1976. This requirement stipulated that

> The Commissioner [of Education] will pay to each State an amount not to exceed 50 percent of the excess cost (i.e., costs of special educational and related services above the costs for non-handicapped [and non-disadvantaged and non-LEP] persons of programs, services, and activities under the basic grant...[and the grant for] program improvement and supportive services...for handicapped [and disadvantaged and LEP] persons (composite of 45 CFR Secs. 104.303(a) and 104.303(b), October 3, 1977).

An accompanying U.S. Office of Education (USOE) statement claimed that the rule was necessary to carry out Congressional intent, as reflected in statutory language emphasizing the *special* services needed by handicapped and disadvantaged persons. Unless federal funds (and state-local matching funds) were applied to excess costs, this statement said, "funds available to accommodate [the] special populations would be greatly reduced" (42 FR 53826). With this justification, an excess cost provision similar to that in the Perkins Act was imposed through administrative rulemaking.[37],[38]

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[36] Conference Report on H.R. 4164, *Congressional Record--House*, October 2, 1984, H 10777-78, emphasis added.

The 1977 regulations were also accompanied by the following illustrative and explanatory language:

> For example, if the cost of providing vocational training to the non-handicapped student is $600, and the cost of providing vocational training to the handicapped student in the same class is $750, the State may use the combined Federal [and] State and local [matching] funds to pay only the incremental cost of $150 for the vocational education program for the handicapped student.
>
> Alternatively, if the handicapped or disadvantaged student is placed in a separate program, Federal [and] State and local [matching] funds may only be used to pay those costs which exceed the average per pupil cost for vocational education for non-handicapped or non-disadvantaged students (42 FR 53826).

Thus, the excess cost requirement clearly applied, initially, to both mainstreamed and separate programs for handicapped and disadvantaged students. Shortly thereafter, however, the regulations were "clarified" at the behest of state agencies to stipulate that *all* costs of separate programs for handicapped, disadvantaged, or limited English-speaking students could be deemed excess costs.[39] This rendered meaningless the stipulation that federal funds could be used to pay only the excess costs of such programs. It also established a strong fiscal incentive for LEAs to place their special-need students in separate programs.[40] Under the Perkins Act, however, Congress restored the initial 1977 interpretation, making clear, once again, that grantees may expend federal aid only for excess costs of supplemental services regardless of the mode of service delivery.

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[37] In an interesting discussion of the origin of the excess-cost requirement, Brustein (1981) explains that the USOE first issued proposed rules stating explicitly that federal funds (and matching funds) could be used to pay the *entire* costs of program for the handicapped and disadvantaged and did *not* have to be limited to excess or incremental costs (42 FR 18549). According to Brustein, none of the comments on the proposed rules challenged this position, and USOE prepared draft final regulations along the same line. However, a letter from the leading members (of both parties) of the cognizant House and Senate committees, sent to USOE well after the comment period had closed, asserted strongly that limiting federal aid to excess costs was necessary to conform to Congressional intent. USOE, says Brustein, acceded to these members' wishes and issued the excess cost regulation cited above.

[38] It seems surprising that USOE's justification of the excess cost rule did not cite the nonsupplanting language in the 1976 Amendments (P.L. 94-482, Sec. 106(a)(6)), which could have been construed, with strong supporting precedent from ESEA Title I, to rationalize limiting federal funds to costs supplemental to the costs of regular state and locally financed programs. The relationship between the Perkins excess cost and nonsupplanting rules is discussed further below and also in Chapter 7.

[39] U.S. Office of Education, Notice of Interpretation, March 27, 1978, 43 FR 12757.

The Perkins supplemental services and excess cost rules obviously raise many questions, not the least of which are how various terms in the regulations are to be defined, interpreted, and made operational. The following two sections of this chapter deal with issues surrounding the definition of supplemental services and the definition and measurement of excess costs. These discussions are followed by assessments of the probable effects of these rules on resource allocation, additivity of federal aid, and other program outcomes.

DEFINING SUPPLEMENTAL SERVICES

The statute and regulations do not define supplemental resources or services precisely but do give some important clues. According to the regulations quoted above, supplemental resources or services must first, of course, be "supplemental"--that is in addition to regular resources or services. Second, they must be resources or services "not provided to other individuals" (i.e., nonhandicapped or nondisadvantaged students) in vocational education. Third, they are supposed to be "essential" for handicapped or disadvantaged individuals to participate in vocational education. These specifications need to be deciphered, and several other issues of interpretation need to be addressed.

Determining that Services are "Supplemental"

Handicapped or disadvantaged students may be said to be receiving supplemental services to the extent that the resources devoted to serving them in vocational education exceed those devoted to serving regular students, or students in regular vocational programs. Identifying supplemental services is straightforward in principle where special-need students receive all the same things as regular students plus, in addition, certain items that the regular students do not receive. For example, if disadvantaged vocational students are instructed in the same classrooms as regular students, by the same teachers, using the same materials and equipment, and so forth *and* if, in addition, they receive extra help from teacher aides who work only with the disadvantaged, then one can say that the aides are unambiguously supplemental resources, and the costs incurred to hire the aides are excess costs payable with federal funds.

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[40] See, e.g., NIE Vocational Education Study (1981) and Hoachlander, Choy, and Lareau (1985).

But in practice, confirming that supposedly supplemental resources are devoted exclusively to the target-group students and not shared with regular students can be difficult. In the example given above, disadvantaged vocational students are educated in the same programs and classroom as regular students ("mainstreamed"). The teacher aides, paid for with Perkins funds, are supposed to serve only the disadvantaged students, but what actually takes place behind closed classroom doors is only minimally susceptible to local (much less state or federal) administrative control. Such control is even less feasible when the supposedly supplemental items consist of less-easily observable resource inputs, such as extra allotments of the classroom teacher's time. Obviously, to the extent that nominally supplemental resources are shared, they cease to be supplemental, and the objective of giving target-group students more resources than regular students receive is undercut. The difficulty of ensuring that claimed supplemental resources are truly supplemental creates a gap between the potential effectiveness and the likely effectiveness in practice of the Perkins supplemental services and excess cost requirements.

Even apart from practical problems of verification, identifying supplemental resources or services is not always simple, even in principle. Often, serving handicapped or disadvantaged students entails replacing one type of resource with another. For example, if equipment has to be modified to be used by handicapped students, the modified equipment is a *different* resource from that provided to regular students, but whether it is also a *supplemental* resource depends on whether it is more expensive than the regular equipment. If there is no added expense, it seems fair to say that one type of resource has replaced another, but nothing supplemental is involved; if there is some additional expense, a supplemental resource has been provided only to the extent that the specially modified equipment is more costly.[41] In this case, showing that a distinctive resource has been provided to the handicapped vocational students is not enough. A cost comparison is needed to establish that the special item is supplementing--not merely replacing--something that regular students receive.

More generally, handicapped or disadvantaged vocational students, especially when educated separately, may receive different mixes of resources than regular students in comparable vocational education programs. They may be taught by different types of personnel (e.g., teachers specially trained to work with the handicapped), in different settings, using different materials and equipment, and so forth. Where resource mixes differ substantially, the determination of whether and to what extent supplementary services have been provided has to rest on a comparison of total program costs. Attempting to identify particular supplemental items becomes futile. One must calculate the cost of the entire package of resources provided to the handicapped or disadvantaged vocational students and compare it with the cost of the entire package of resources provided to regular vocational students. Supplemental services exist only if and to the extent that the former exceeds the latter. Unfortunately, making valid cost comparisons is easier said than done. Ultimately, the prospects for ensuring that handicapped and disadvantaged students actually do receive supplemental resources or services hinge on seemingly technical aspects of cost measurement, as will be seen below.

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[41] In practice, however, grantees have apparently been allowed to claim the full costs of modified or specialized equipment, not just the extra costs, as costs of supplemental services for special-need students. This is a major loophole in the excess cost rules. For more on the point, see the discussion of excess cost measurement below.

The Requirement that Supplemental Services Must Be Services "Not Provided to Other Individuals in Vocational Education"

In light of the above, what is one to make of the statutory stipulation that supplemental services for the handicapped or disadvantaged should be services "not provided to other individuals in vocational education"? Is this a qualitative or quantitative distinction? Can grantees use their Perkins funds (and nonfederal matching funds) to give target-group students larger quantities of items that regular students receive (e.g., more materials, more computer hours, more teacher time per pupil), or must they provide supplemental items that regular students do not receive at all?

As explained above, it is possible only with certain program designs to identify discrete supplemental resources, and hence it would be possible only with those same designs to insist that such resources be qualitatively distinct. For example, in a mainstreamed program where handicapped or disadvantaged students get exactly the same resources as regular students plus certain clearly identifiable extra items, it might be feasible to limit the extra items to things that regular students do not receive at all. But with other program designs, "supplemental" necessarily refers to a quantitative distinction. Thus, the very fact that alternative program designs are allowed under the Act--i.e., separate vocational programs designed specifically for handicapped or disadvantaged students--indicates that providing larger amounts of resources, rather than qualitatively distinct resources, is sufficient to comport with Congressional intent.

OVAE/ED officials also seem to have interpreted the supplemental services rule to require quantitative but not necessarily qualitative differences in resources. The officials interviewed for this study agree, for example, that supplemental services may take the form of smaller class sizes in separate programs for the handicapped or disadvantaged or, say, more computer time per handicapped or disadvantaged student than per regular student. Thus, the statutory phrase, "services not provided to other students in vocational education" has been translated, in practice, into "services *in amounts* not provided to other students." This interpretation is buttressed by clear statements in the law that Congress intended educational judgments--decisions about *how* target group students should be served--to be made at the state and local levels.[42] Requiring qualitatively different resource inputs would not only contravene this principle but might be educationally perverse, as it could force grantees to provide relatively low priority resources or services instead of those deemed educationally most beneficial.[43]

The foregoing notwithstanding, grantees often act, according to OVAE officials, *as if* qualitatively different items must be provided. That is, LEAs often take care to associate Perkins funds only with distinctive, easily identifiable items, such as aides who serve special-need students, special equipment for the handicapped, and special need assessments not provided to regular vocational students. This behavior is allegedly motivated by the desire to minimize difficulties in demonstrating compliance with the Perkins rules. Grantees consider it "safer," in the event of an audit, to be able to point to specific items provided exclusively to the handicapped or disadvantaged than to have to show that such students are receiving appropriately large extra doses of standard resource inputs. Such behavior is a matter of concern (assuming that the characterization is accurate). If grantees are selecting services for the handicapped and disadvantaged on the basis of compliance considerations rather than educational criteria, the federal rules may be having adverse side effects on program substance. The implications of such side effects on programs are considered further later in this chapter.

The Meaning of the Requirement that Services Must Be "Essential"

Sections 201(c) of the Act says that federally funded supplemental resources or services must be "essential" for handicapped or disadvantaged students to participate in vocational education, but the term "essential" cannot be taken literally; it must be viewed as hyperbole in the legislative drafting process. Proving that any input into education is essential in any field of study or for any type of student is difficult or impossible. A literal interpretation only rarely makes sense. For example, provisions for communication with deaf or blind students (a signing interpreter or Braille text) are arguably "essential," but it is difficult to identify anything comparable for disadvantaged children or for most other categories of handicapped. If a criterion of "essentialness" were applied strictly, there would be very few justifiable outlays of Perkins funds.

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[42] A specific expression of Congressional intent in this regard appears at the end of P.L. 98-524 in a statement labeled "Vocational Education Policy" (Sec. 6).

[43] This is not to deny that in some cases a qualitatively different resource or service is essential or is the item that makes most sense--e.g., providing an interpreter for a deaf student or modifying equipment so that a physically impaired student can use it. The point is that it is up to the grantee to make this educational judgment.

Without knowing what the drafters of the Act had in mind, one can do little more than offer seemingly reasonable reformulations. For instance, one might read into "essential" the notions that supplemental services must be "germane"--i.e., related to the student's special needs and chosen vocational program--and "educationally beneficial" for the students concerned (presumably in the opinion of education professionals). This is not much of a requirement, however, since it requires nothing more of states than to behave reasonably by their own lights. A different approach is to focus on process by requiring grantees to specify supplemental services in the individual assessments conducted pursuant to Sec. 204(c) of the Act. Whether either approach reflects Congressional intent (or, for that matter, whether that intent goes beyond exhorting grantees to do worthwhile things with federal funds) is a matter of conjecture. Thus far, the "essential" clause lacks a convincing interpretation, and clarification would be welcome in the next legislative cycle.

The Relationship between the Supplemental Services and Excess Cost Requirements

Because the supplemental services and excess cost requirements are intertwined both logically and in the statute, the question arises of whether there are two requirements or one. Are grantees required to spend supplemental dollars on handicapped and disadvantaged students or to provide supplemental amounts of physical resources and services or both? In principle, it would seem that the answer should be "both" because the two requirements are not logically equivalent. One could incur excess costs without necessarily providing real supplemental resources (e.g., by assigning more highly paid teachers to target-group students than to regular students) or, conversely, one could provide supplemental resources without incurring excess costs (e.g., by assigning lower-paid teachers, but proportionately more of them, to work with target-group students than with regular students.

In practice, however, the distinction between the supplemental services and excess cost rules is sustainable only where particular resource inputs can be identified as supplemental; it breaks down wherever differences in resource mixes make such identification impossible. One can speak, in the latter instances, only of supplementary resources in the aggregate, and the only way to determine whether adequate supplementary resources have been provided is to compare program costs. Thus, the two Perkins requirements are separable where particular incremental resources are provided for the target-group students (as is likely to occur in mainstreamed settings), but they merge into one where target-group students and regular students are served in programs of different designs (as is likely when the two groups are served separately). Where the distinction blurs, one can speak meaningfully only of a combined supplemental services/excess cost requirement and of tests of compliance based on interprogram comparisons of total costs. Specifically, the total cost of a program for handicapped or disadvantaged students needs to be compared with the total cost of serving the same number of students in a comparable regular vocational program, and the test is that the former must exceed the latter by at least the amount of earmarked federal aid plus required matching funds. Ideally, the cost comparison should reflect interprogram differences in real resource inputs, but as the following discussion of cost measurement will show, this is a difficult feat to accomplish.

The Distinction between Mainstreamed and Separate Programs

The foregoing discussion sheds light on the rationale for the statutory distinction between the excess cost requirements applicable to mainstreamed and separate programs. In a mainstreamed program, target-group students receive, by definition, many or most of the same services (the "base program") as regular students. One can show compliance with the Perkins rules, therefore, by demonstrating that (a) the base program is the same for both groups, (b) identifiable supplemental resources are present in sufficient amounts, and (c) the supplemental resources are actually devoted to to the target-group students.[44] Only the costs of the supplemental resources need to be considered. In contrast, if the target-group students are educated in separate and differently designed programs, then the question becomes whether the resource package provided to those students, taken as a whole, is larger by a sufficient amount than the resource package provided to regular vocational students. Since resources in the aggregate can only be be measured in dollars, the applicable test is an interprogram comparison of total costs. The baseline for the comparison is, of necessity, the one prescribed in Secs. 401.52(b) and 401.53(a)(2) of the regulations--namely, the cost of serving nonhandicapped or nondisadvantaged students in a comparable regular vocational program. Thus, although the Perkins distinction between mainstreamed and separate programs evolved partly by accident, as a last-minute amalgam of provisions in the House and Senate bills, it does reflect a valid difference between tests applicable to two different program designs.[45]

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[44] One needs to be careful, however, about identifying the common base program that target-group and regular students supposedly receive. If, for example, the target-group students are "pulled out" of regular vocational classes for certain intervals to receive special services (e.g., remedial instruction), it cannot be said that they are receiving the full benefits of the regular vocational instructional program. Instead, some of the regular instructional program is being replaced by separate instruction. The excess cost in this case is not the full cost of services provided in the pull-out setting but only the difference between that cost and the cost of the missed regular instruction.

Perhaps a more important question is whether the mainstreamed-versus-separate dichotomy holds up in practice--that is, is it likely to be clear in real-world situations whether students are being served in a mainstreamed or a separate program? Unfortunately, the answer seems to be "no" in some important cases. Suppose, for instance, that an inner-city high school offers training in various manual trades. All enrollees in these programs are poor and/or academically disadvantaged. Are they being educated in mainstreamed or separate programs? If the latter, which are the "regular" vocational programs against which the costs of these separate programs should be compared (especially if training for the same or similar occupations is not offered in the LEA's more-advantaged high schools)? Or suppose that a high school serves a broad range of vocational students but that students tend to be sorted into specific occupational programs on the basis of ability and academic performance. Those training for such occupations as building maintenance (janitorial work) are disadvantaged (or perhaps learning disabled or educable mentally retarded). Is the building maintenance program separate or mainstreamed? If it is separate, what is the proper standard of comparison for measuring excess cost, given that there is no building maintenance program for regular vocational students?[46] Or suppose that only a handful of the students enrolled in a particular vocational program (say, 10 percent) are nondisadvantaged--is that enough to say that the program is mainstreamed? If those students depart, does the program then become separate? These questions, though argumentative, demonstrate that the mainstream-versus-separate distinction posited in the statute may not be meaningful in practice.

DEFINING AND MEASURING EXCESS COSTS

At this point, we need to inquire more carefully into how the costs of different vocational education programs are to be measured and compared. The foregoing discussion of supplemental services, replete with references to cost comparisons, may inadvertently have given the impression that determining the excess cost of a program is a straightforward matter. The truth is to the contrary. As one delves into the question of how excess costs should be quantified, various conceptual and technical problems emerge. It is not clear which categories of costs should be included, how certain resources (particularly teachers) should be valued or priced, how certain other costs (e.g., of equipment) should be quantified, or how the "regular" programs should be selected against which costs of special programs for target group members are to be compared. Thus far, OVAE/ED has issued only minimal and fragmentary guidance on excess-cost measurement, leaving major issues to be resolved locally or by states and raising doubts about whether the excess cost rule will, or can be, adequately implemented and enforced.

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[45] Strictly speaking, the relevant distinction is between programs with and without identifiable supplemental resources rather than between mainstreamed and separate programs. A separate program with essentially the same design as a regular vocational program (one that differs, say, only in class size or in the availability of a teacher aide) could be dealt with in the manner prescribed for a mainstreamed program under the statute--i.e., by focusing only on supplemental resources and their costs. Only the subclass of separate programs with truly different program designs actually requires the special treatment set forth in the law.

[46] One could take the position, in this case, that none of the students in the building maintenance program qualifies for federal aid under Perkins, since the program is designed for such a low level of ability that none of the enrollees requires special assistance to succeed. It seems unlikely, however, that excluding low-income, low-performing students on these grounds would reflect Congressional intent regarding the students to be served.

The following explanation of how to measure the excess costs of separate programs for handicapped or disadvantaged students was provided by OVAE/ED in the form of an answer to a question about the regulations:

> Generally, an eligible recipient...would first identify each comparable program it provides to non-handicapped or non-disadvantaged students. Then it would calculate the total cost of operating each program on a fiscal year or program year basis. At a minimum, all direct costs--such as salaries, supplies, and equipment--would be included in the calculation. Indirect costs may also be included, These program costs are then divided by the number of Full Time Equivalent (FTE) pupils served in each program to determine an average per-pupil cost.
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> Using the same cost basis, the cost of operating the separate (or non-mainstreamed) program for handicapped or disadvantaged persons would be calculated on a per-FTE pupil basis (50 FR 33297).

Although the remaining steps in the cost comparison are not spelled out, they presumably consist of (a) multiplying the interprogram difference in per-pupil costs by the number of handicapped or disadvantaged pupils served in the separate program to arrive at the program's total excess cost, (b) aggregating excess costs over all of a grantee's programs for the handicapped and disadvantaged, and (c) determining, for each grantee and for the state as a whole, whether excess costs are at least equal to the sum of federal aid plus required matching funds. This guidance is helpful as far as it goes, but it is limited to the mechanics of excess-cost computations and does not reach the more troublesome substantive issues of how program costs should be defined, quantified, and compared. These issues are explored in the following pages.

Cost Categories to be Included in Excess-Cost Computations

One basic question concerns the range of cost categories to be included in the excess-cost computations. The foregoing OVAE/ED guidance says that direct costs should be included and that indirect costs *may* be included. The content of these categories--especially indirect costs--is not fully specified. Leaving these matters loosely defined is problematic, as it allows grantees to select definitions, and even to switch definitions, so as to minimize their obligations under the Act.

Uncertainties regarding the make-up of the direct cost category are relatively minor. The OVAE/ED guidance refers to direct costs "such as salaries, supplies, and equipment." These are presumably limited to the salary costs and other costs directly associated with permitted activities under the Act, which include vocational instruction, some basic skills instruction, guidance and counseling, and certain administrative activities (see the discussion of permitted uses of Perkins funds in Chapter 3). Whether certain other items are chargeable directly--e.g., costs of facilities and pupil transporation--has not been made clear and needs to be examined. Questions about the treatment of indirect costs are more troublesome. Allowing indirect costs to be included at the grantee's option is disturbing, as it invites grantees to do the computations with and without indirect costs and then to choose the definition that yields the higher excess-cost figures. Moreover, OVAE's failure to identify admissable indirect costs and to specify how such costs are to be quantified leaves grantees ample room for maneuver. To illustrate, suppose that an LEA that educates its handicapped vocational students in small classes is considering whether to include indirect costs of plant operation and maintenance in its excess-cost calculations. If such costs are allocable in proportion to numbers of classrooms, including them would be advantageous; if they had to be allocated in proportion to numbers of students served, it would not. In the absence of cost-accounting standards, grantees can pick the method that works best for them, thereby manipulating the system.

But the major problem with indirect cost is more fundamental. Such costs, by definition, are usually not attributable to particular programs in the sense that they are incurred because those programs exist. Therefore, by admitting indirect costs into the excess-cost computations, OVAE may be allowing grantees to pay with federal funds costs that would have been incurred even if there were no extra services for special-need vocational students. Suppose, for example, that an LEA treates the salary of its director of vocational education as an indirect cost and allocates it between regular and target-group programs in proportion to numbers of students served. Assuming that the same director's salary would be paid even in the absence of the special programs, this procedure involves a replacement of nonfederal with federal funds. This is supplanting, and it is contrary to Congressional intent if not contrary to law. It appears, therefore, that allowing indirect costs may conflict with the Perkins supplement, not supplant requirement (see Chapter 6). At the very least, the legitimacy of including indirect costs needs to be reconsidered in light of these potential problems.

Pricing of Teachers and Other Resources

A major problem in comparing costs across programs is that there are large variations within school systems (and postsecondary institutions) in the prices paid for more or less interchangeable resources, particularly teachers and other members of instructional staffs. One vocational education teacher may be paid $20,000, while another, with greater seniority and/or a postgraduate degree, is paid $40,000. Such salary variations can distort interprogram comparisons. At a minimum, they introduce doubts about the validity of the cost figures; in the worst case, they create opportunities for grantees to circumvent the excess cost rules.

To see why resource pricing is a problem, consider the following three highly simplified hypothetical situations:

> *Case 1.* An LEA educates regular and disadvantaged vocational education students in separate classes of the same size. The teacher of each class is paid $25,000 per year. The disadvantaged students, but not the regular students are also served by a teacher aide paid $10,000 per year.
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> *Case 2.* Again, the regular and disadvantaged students are served in separate classes of the same size. The teacher of the regular class is paid $25,000 per year, while the more senior teacher of the disadvantaged is paid $35,000 per year. There is no teacher aide.
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> *Case 3.* Once more, the regular and disadvantaged students are educated in separate classes of the same size. The regular students are served by an experienced teacher paid $35,000 per year. The disadvantaged students are served by a less experienced teacher paid $25,000 per year *and* by a teacher aide paid $10,000 per year.

What excess costs of serving the disadvantaged can legitimately be claimed in each instance?

The first case is clear-cut. The regular and disadvantaged students are taught by teachers paid identical salaries. In addition, the disadvantaged students receive an unambiguously supplemental resource, the services of the teacher aide. The aide's $10,000 salary is an excess cost, chargeable to Perkins funds.

Case 2 highlights the resource pricing issue. Suppose that the hypothetical LEA, citing actual salaries paid, claims that it has incurred excess costs of $10,000 on behalf of the disadvantaged. Is this acceptable? All OVAE officials and other experts with whom this type of situation was discussed say "no." Their reason is that although additional dollars have been expended, no supplemental resources have been provided. "A teacher is a teacher," they say, and the LEA should be given no credit for simply assigning a higher-paid teacher to its disadvantaged students. But this position, reasonable though it may appear, is inconsistent with both the previously cited OVAE/ED guidance regarding excess costs and the letter of the statute. According to both, grantees are to add up program costs "such as salaries" and then compare total costs between the regular program and the separate program for the disadvantaged. There is no indication that some salary dollars should count in the cost comparison but that other salary dollars should not.

The problem, in essence, is that using actual teachers' salaries in the cost comparison conflicts with the premise that more experienced and less experienced teachers are equivalent resources ("a teacher is a teacher"). A method consistent with that premise is to value teachers at "standard," or average, prices. If the average vocational education teacher is paid $30,000, for example, that salary could be attributed to each teacher, regardless of what the individual teachers actually are paid. (The same applies, of course, to such other personnel as aides, instructional specialists, and administrators, all of whom would be valued at the standard salaries for their respective categories.) Under the standard-pricing method, the LEA in Case 2 would be deemed to be providing teachers of equal value to the regular and disadvantaged students, and no excess costs would be recognized.[47]

In Case 3, the problem is reversed. A supplemental resource seems to have been provided--the time of the teacher aide; but no extra dollars are expended on the disadvantaged students. Can the LEA claim the salary of the aide as an excess cost and pay it with Perkins funds? This case provokes some controversy. Some current and former OVAE officials are inclined to disregard the difference in teachers' salaries and treat the aide's salary as an excess cost. The standard-pricing method leads to the same conclusion. There is no denying, however, that this interpretation conflicts with a literal reading of the regulations. Moreover, it has the disturbing implication that the LEA should be allowed to charge $10,000 in salaries to the federal program even though it actually spent no more per disadvantaged student than per regular vocational student.

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[47] Of course, if more experienced and less experienced teachers are not educationally equivalent (interchangeable) resources, attributing the same standard salaries to both would be incorrect. Suppose that the LEA in Case 2 claims that experienced teachers are more effective in dealing with problems of the disadvantaged and that therefore a real supplemental resource is being provided by assigning experienced (and higher-paid) teachers to the disadvantaged students. Acceptance of this educational judgment would logically imply allowing some or all of the $10,000 salary differential as an excess cost. Note, however, that even if more experienced and less experienced teachers were deemed nonequivalent, it would not follow that the actual salaries of individual teachers should be used in the cost comparisons. Standard pricing would still be appropriate, but multiple classes of teachers would have to be recognized (e.g., junior and senior teachers), and each teacher would be valued, for the purpose of the cost comparison, at the standard salary for his or her class.

These illustrations show that it is often unreasonable to compare costs between programs for handicapped or disadvantaged students and programs for regular students on the basis of actual salaries paid to individual staff members (or, more generally, on the basis of actual resource prices). OVAE officials appear to recognize this. They seem not to take literally the regulatory requirements to add up salaries and other program costs and then to compare the resulting dollar totals between programs. Instead, they focus on particular, allegedly supplemental resources and on the associated resource costs. But this suffers from being ad hoc; it relies on case-by-case judgments of which costs should count instead of on general rules; and, most important, it is inapplicable to program designs that do not allow clear identification of supplemental resources. Therefore, a more general alternative solution to the cost measurement problem is needed.

The standard pricing method referred to above is an alternative well established in the education policy literature. For instance, it is the method used in the large-scale studies of costs of serving the handicapped by Kakalik et al. (1973) and Moore et al. (1988) and in the cost-analysis portion of the well-known Sustaining Effects Study of ESEA Title I (Haggart et al., 1978). The investigators in these studies determined that using actual salaries and prices was not an acceptable method of measuring excess costs. On the legal front, a step toward making standard pricing an official policy was taken in formulating the "comparability" regulations under ESEA Title I. Under these regulations, LEAs were required to demonstrate that per-pupil expenditures for instructional staff salaries were comparable in Title I and non-Title I schools, but the portions of salaries based on length of service (longevity) were excluded from the calculations.[48] The point of the exclusion was to deal with the problem that using actual salaries distorts cost comparisons. Thus, there is precedent in both federal education regulations and policy studies for basing cost comparisons on standard rather than actual prices. Applying the same method under Perkins could be the key to solving some otherwise intractable problems of interprogram comparisons of costs.

Costs of Capital (Equipment)

How costs of equipment are measured is of particular importance because equipment purchases, which reportedly consume significant percentages of Perkins funds, provide special opportunities for claiming dubious excess costs. Such opportunities arise mainly because costs of equipment are reported in school accounts as current costs in the year the equipment is acquired rather than as costs incurred over the years the equipment is used. This makes it possible to claim excess costs of equipment for the handicapped or disadvantaged disproportionate to the extra equipment, if any, that is actually provided to such students.

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[48] 45 CFR, Secs. 116a.26(b)(3), 116a.26(e), October 1, 1980. It is not clear what the rationale was under ESEA Title I for excluding seniority-based pay differentials from the cost comparisons, while retaining differentials based on teacher training. Perhaps the decision reflected a belief that teacher training is a valuable resource while teacher experience is not.

The following example illustrates the problem: An LEA operates a program to train regular students in word processing, in which each student uses word processors worth $1,500. The equipment was purchased two years ago. This year, the LEA sets up a separate word processing program for handicapped students (say, with a smaller class size) and again purchases word processors worth $1,500 for each handicapped participant. The LEA claims the entire $1,500 outlay per handicapped student as an excess cost, chargeable to Perkins funds, since no equivalent outlays were made *this year* for the regular students. Such a claim is probably valid under the Perkins rules, but from an economic perspective it is completely spurious. In fact, no excess cost has been incurred; each student, regular and handicapped alike, has access to $1,500 worth of equipment. Yet by treating equipment costs as current outlays and buying equipment for the handicapped in a different year from equipment for regular students, the LEA is able to generate a large apparent excess cost on its books. In this manner, accounting practices can subvert the intent of the statutory requirements.

The problem described here can be viewed as another manifestation of improper resource pricing. Pricing equipment at its full cost in the year of purchase and at zero during the remaining years of its life is not a reasonable way to value the services of equipment used in vocational programs. A more valid approach is to amortize the equipment over its projected useful life. For example, assuming that the $1,500 word processors in the foregoing hypothetical case have five-year useful lives, one would attribute to each student $300 worth of "equipment services" per year. Within this more reasonable accounting framework, it would be immediately evident that the foregoing example involves no excess cost.

Another problem of equipment pricing, already mentioned in this chapter, is that of deciding, when equipment for the handicapped or disadvantaged is different from equipment for regular students, how much of the cost of the special equipment is "excess." The comments of OVAE officials on this matter are disturbingly vague. Some officials seem willing, in the interest of avoiding so-called "hair-splitting" rules, to allow grantees to claim the *full* costs of specialized equipment as excess costs, even when the specialized equipment substitutes for standard equipment provided to regular students. This, if true, would be an abuse. From an economic standpoint, whether there is an equipment-related excess cost can be determined only by comparing the value of equipment provided per handicapped or disadvantaged student with that provided per regular student. Only if, and to the extent that, the former exceed the latter is there a valid basis for claiming excess costs.

A final point about equipment pertains to the special provision in the Act stating that

> Funds available to [grantees] for the disadvantaged may be expended for the acquisition of modern machinery and tools in schools at which at least 75 percent of the students enrolled are economically disadvantaged (P.L. 98-524, Sec. 201(d)(2)).

Since equipment is already included among the types of resources for which grantees may spend Perkins funds for the disadvantaged under Sec. 201(c), the purpose of this additional provision is apparently to indicate that equipment outlays need not be supplemental if made under the stated conditions.[49] Thus, the foregoing concerns about how supplemental equipment is identified and priced are rendered irrelevant by the statute in cases where 75 percent or more of a school's enrollees are economically disadvantaged. This provision can be viewed as either a loophole in the supplemental services and excess cost provisions or as a special incentive to provide better equipment in schools where disadvantaged students are concentrated. Whether the latter result is realized is an interesting empirical question.

Identifying Comparable Regular Programs

Finally, an important question in excess cost measurement is how grantees are to select the "comparable regular" vocational programs against which the costs of separate programs for the handicapped or disadvantaged are to be compared. Although the regulations specify neither the respects in which regular programs must be "comparable" nor the level of aggregation at which comparisons must be made, the OVAE/ED interpetation seems to be that individual, occupationally specific programs are the proper units of comparison. For example, a word processing program for the handicapped must be compared against a regular word processing program, and an auto repair program for the disadvantaged must be compared with an auto repair program for regular students. Apparently, comparisons of broader program aggregates (e.g., all programs in business occupations or all programs in industrial arts) are not considered appropriate.

The requirement for detailed program-by-program cost comparisons may seem to maximize fairness in computing excess costs, but it could work, in practice, to the detriment of handicapped and disadvantaged students. Suppose, for instance, that under the heading "business occupations" an LEA offers higher-cost and lower-cost programs and that most disadvantaged students are channeled into the latter. Under these circumstances, the effect of comparing costs between particular programs rather than between business occupations programs generally is to reduce the excess costs that the LEA must incur for the disadvantaged. Thus, where the full promise of equal access to services has not been realized, OVAE/ED's prescribed method of selecting comparable programs may diminish the services provided to students with special needs.

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[49] Another way of saying the same thing is to declare that machinery and tools acquired under Sec. 201(d)(2) is "presumed to be," or "deemed to be," supplemental or additional equipment. These formulations were used in ED material accompanying the regulations (50 FR 33297-98).

Another problem is that grantees may not operate any programs for regular students that are comparable to the specific programs offered to special-need students. Where no corresponding regular program exists, a grantee has no baseline for the required excess-cost calculations. Recognizing this possibility, ED indicated, in response to a question on the regulations, that

> When an eligible recipient can identify no comparable regular program within its offerings then it may use the average per-pupil costs of comparable regular programs offered by another eligible recipient. However, such costs must be truly comparable. That is, cost differentials between the eligible recipients such as salary levels would have to be adjusted for [sic] (50 FR 33297).

But this advice falls short of solving the problem in at least two respects. First, given all the difficulties of comparing costs among programs within a single school district, it is hard to believe that interdistrict cost comparisons could be made validly. Individual LEAs are unlikely to have either the expertise or the access to other LEAs' data needed to compare costs properly. Further, there is little reason to assume, as a general matter, that regular programs not found in one LEA will be present in neighboring LEAs. A program that serves low-ability, low-performing (i.e., disadvantaged) students in one LEA is likely to serve similar students elsewhere (e.g., the building maintenance program cited earlier). Similar programs for nondisadvantaged, nonhandicapped students may simply not exist. Comparable regular offerings may also not exist for programs offered in special schools (e.g., schools for delinquents) and programs designed to serve the needs of particular local employers. Given these difficulties, the feasibility of using external standards of comparison needs to be reassessed. Alternatives should be considered, including more aggregative cost comparisons, as suggested above, and, where necessary, cost comparisons between vocational and nonvocational programs.

Implications of Cost Measurement Problems

The excess cost requirement is supposed to play a central role in ensuring that federal aid for the handicapped and disadvantaged is used as intended by Congress, but the foregoing discussion raises doubts that the present requirement, as interpreted and implemented by

OVAE/ED, can perform that function adequately. OVAE/ED has issued no detailed explanation of what constitutes an excess cost and no instructions on how excess costs should be quantified. It has not yet acknowledged, much less resolved, the kinds of conceptual and technical issues outlined above. In the absence of federal guidance, states and grantees have broad latitude to decide for themselves, in connection with each federally aided vocational program, how many excess-cost dollars should be claimed and charged against Perkins funds. States and grantees have little reason to constrain themselves more tightly than the federal rules require, since the more loosely they can define excess costs, the more federal aid they can use for purposes of their own choosing. The probable outcome, therefore, is that grantees, under the present rules, will use significant portions of Perkins aid to pay "excess costs" that would be deemed inadmissable under even a moderately rigorous definition of the term.

IMPLICATIONS FOR RESOURCE ALLOCATION AND TARGETING

Now, having considered what the rules mean and how "supplemental services" and "excess costs" can be interpreted, we turn to the implications for resource allocation and targeting. The principal issue is effectiveness: how effective are the supplemental services and excess cost requirements likely to be in ensuring that federal funds set aside for the handicapped and disadvantaged translate into supplemental outlays and services for the intended beneficiaries? In addition, such related issues need to be considered as whether the requirements are "necessary," whether they are unduly burdensome, and whether they may have undesirable side effects on vocational education services and programs.

The key to assessing the effectiveness of the rules is understanding what constraints they impose on the grantees. Are aid recipients effectively constrained to turn federal funds into extra services for handicapped and disadvantaged students? Are they obliged to do more for the handicapped and disadvantaged than they would have done in the absence of the federal requirements? These issues are addressed here at two levels. At the first level, the question is what constraints the rules impose *in principle* and what allocative outcomes that implies. "In principle," in this context, means assuming (a) full compliance with the letter of the law and (b) that supplemental services and excess costs are defined rigorously (i.e., not as they are actually defined now by OVAE/ED). At the second level, the question is how effectively the rules are likely to constrain aid recipients *in practice* and what that portends for resource allocation, taking into account the looseness of current definitions, the loopholes available to grantees, and the difficulties in monitoring and enforcing compliance.

Potential Effectiveness, or Effectiveness in Principle

The effectiveness of the Perkins targeting provisions is essentially synonymous with the degree to which they contribute to the additivity of federal aid; however, it is important to distinguish clearly between two different additivity concepts. One is that federal aid for the handicapped and disadvantaged should translate into *resource and expenditure differentials* in vocational education between target-group students and regular students. The other is that federal aid should *add to* the outlays and services that handicapped and disadvantaged vocational students *would have received* in the absence of the federal grant program. The two are not equivalent, and one does not imply the other. It is possible, for example, that substantial expenditure differentials in favor of handicapped vocational students would have existed even in the absence of the Perkins Act, which means that demonstrating intergroup fiscal differentials should be easy, but this does not ensure that all, most, or any Perkins funds will add to the expenditure differentials that would have existed anyway.

There is little doubt that the supplemental services and excess cost rules are adequate, in principle, to guarantee resource differentials in favor of the target-group students. To be in compliance with these rules, each state has to be able to demonstrate that it incurs excess costs for its handicapped and disadvantaged vocational enrollees equal to at least *twice* the amount of its federal aid receipts under the handicapped and disadvantaged set-asides (twice, because of the 50-50 matching requirement). Likewise, each LEA or postsecondary institution that receives handicapped or disadvantaged set-aside funds has to be able to show that it incurs excess costs equal to at least the sum of its federal grant and its share of the required statewide matching contribution.[50] If such compliance is demonstrated validly (i.e., excess costs are defined and measured properly), then enough excess costs have been incurred to exhaust federal grants and the required matching funds--which is the first of the two additivity criteria. Any shortfall in excess cost, either at the state or local level, would indicate either that some federal aid has been expended for purposes other than excess costs of supplementary services or that the required matching funds have not been provided, or both.

At the same time, it is equally clear that the supplemental services and excess cost rules do *not* and cannot ensure, by themselves, that federal aid will be used additively in the second sense--namely, that it will add to the resources that would have been provided, or the excess costs that would have been incurred, for handicapped and disadvantaged students in the absence of Perkins grants. The rules *may* contribute to this kind of additivity in some circumstances, but whether they do in any particular instance depends on how the grantee in question would have behaved in the absence of Perkins funds and Perkins requirements. For example, a grantee that would have spent nothing on its own for supplemental services for special-need vocational students would (theoretically) be compelled to spend all its Perkins funds on such services to comply with the excess cost requirement. In contrast, a grantee that would have funded special services for the handicapped and disadvantaged generously (i.e., above the Perkins standards) even in the absence of federal aid would not have to increase its outlays at all to satisfy the supplemental services and excess cost rules. The latter grantee could simply "pocket" the Perkins set-aside funds (i.e., spend them on anything it likes) and still demonstrate full compliance with the rules. In general, the more a grantee would have done for target-group students on its own (in the absence of the Perkins Act), the less its need to spend federal aid additively to satisfy the supplemental services and excess cost requirements.

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[50] The 50-50 matching requirements in the Perkins Act have always been interpreted as statewide requirements only, not requirements applicable to individual local grantees. Whether the matching obligation is passed on to local units and how state-provided matching funds, if any, are apportioned among local units are decisions to be made by each state. Therefore, all that can be said about the obligations of individual grantees to incur excess costs is that (a) each grantee must show excess costs at least sufficient to exhaust their federal funds, and (b) locally incurred excess costs in the aggregate (plus any excess costs incurred directly by state agencies) must sum to the statewide requirement.

If we define supplanting as a substitution of federal funds for nonfederal funds that *would otherwise have been* expended for the purpose in question, then it is clear that the supplemental services and excess cost rules are no bar to supplanting. These rules require only that excess costs be incurred in amounts commensurate with Perkins aid but *not* that they be greater than the excess costs that would have been incurred in the absence of Perkins. (Whether the supplement, not supplant requirement in Sec. 133(b)(16) of the Perkins Act does require additivity in the latter sense is an issue discussed separately in Chapter 6.)

For a more concrete appreciation of what the supplemental services and excess cost rules do and do not require in principle, consider the following multipart example involving an LEA that receives Perkins grants for vocational education of the disadvantaged subject to those rules:

1. Suppose that the hypothetical LEA funds a vocational program for regular students at $1,000 per student and would, in the absence of any federal aid, spend $1,100 per student on a comparable program for disadvantaged students (i.e., this LEA is willing, without outside aid or compulsion, to provide supplemental services worth $100 per disadvantaged student).

2. Suppose now that this same LEA receives $150 from Perkins for each disadvantaged vocational student and, initially, that there is no matching requirement.[51] The LEA is *not* obliged by the supplemental services and excess cost rules to add the entire $150 in federal aid to the $1,100 it would have spent on its own. Rather, its obligation is only to raise the outlay differential in favor of the disadvantaged from $100 per student to $150, which is the minimum excess cost required under Perkins. Thus, if the LEA does only the minimum required by law, its total outlay per disadvantaged student rises to $1,150, of which $150 is deemed excess cost for the purpose of demonstrating Perkins compliance. However, the net effect of the $150-per-student grant under these assumptions is to raise spending per target student by only $50 compared with what it would have been otherwise. The remaining $100 per student displaces (supplants) nonfederal funds that would otherwise have been spent on the target students, freeing them for the LEA's general use.

   Note that without the excess cost rule (and assuming no operative nonsupplanting requirement), the LEA would have been able to substitute *all* its Perkins money for nonfederal funds, leaving the outlay per target student at $1,100. Thus, although the excess cost rule, in this example, ensures only one-third additivity of federal aid (i.e., increased spending of $50 per target-group student), it still yields greater additivity than no rule at all.

3. Suppose next that a requirement for 50-50 matching of the federal contribution to excess costs is passed on to the LEA by the state.[52] This raises the required minimum level of spending per disadvantaged vocational student to $1,300, as compared with the $1,100 that the LEA would have spent voluntarily. The LEA, to comply, must add $200 per target-group student to what it would have spent for each such student in the absence of the federal program. That is, it must expend the entire $150 per student in federal aid plus an additional $50 per student of its own funds to satisfy the combined excess cost and matching requirements. Note that in this case federal aid is 133 percent additive--$150 in aid generates $200 in extra spending on the target-group students.

4. The foregoing results are highly sensitive to what is assumed about the LEA's willingness to incur excess costs for the disadvantaged in the absence of a federal requirement. If the LEA were willing to spend $1,300 per disadvantaged vocational student even in the absence of federal aid, the federal grant, even with a matching requirement, would have no necessary additive effect on spending. Without spending any more than it would have spent voluntarily in the absence of aid, the LEA would already be in compliance. In contrast, an LEA that would

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[51] To simplify the example, it is assumed that there is a predetermined, fixed number of disadvantaged vocational students eligible for federally funded services, and hence that the amount of federal aid per student can be determined unambiguously.

[52] As noted above, there is currently only a statewide matching requirement and no LEA-level matching requirement under Perkins; however, states can pass the entire matching requirement on to grantees.

> have provided zero supplemental services to its disadvantaged vocational students in the absence of a federal program would be forced to increase its spending by the full $300 per student (federal aid plus 50-50 matching) to be in compliance. Note that it is only in this extreme case--an LEA that would do nothing for the target group on its own--that one can expect complete additivity of federal aid and matching funds (i.e., 200 percent additivity of federal aid).

This example shows that the degree to which grantees are constrained by the supplemental services and excess cost requirements varies greatly, depending on the grantees' own propensities to support the Congressionally designated target groups. Grantees that would have provided ample supplemental services to special-need vocational students even in the absence of the Perkins Act (either because they consider it "the right thing to do" or because they are compelled to do it by state or other laws) should be constrained minimally, if at all, by the Perkins requirements. For such grantees, Perkins funds for the handicapped and disadvantaged constitute essentially unrestricted aid. In contrast, the grantees likely to be the most tightly constrained by the Perkins rules are those who, left to their own devices, would do nothing for target-group students, or who might even discriminate against them. Such grantees would be obliged, as a condition of receiving federal aid, to provide services and incur costs that would otherwise not have been forthcoming.[53] The likely effects in intermediate cases are that (a) the requirements will compel some grantees to provide more supplemental services and incur more excess costs for target-group students than they would have otherwise, but (b) many grantees will be free to use portions of their Perkins grants to supplant state and local funds, and (c) most grantees will be able to satisfy some or all of the matching requirement with funds that would have been spent on target-group students even in the absence of the federal program.

It is important to recognize, in connection with the foregoing, that many Perkins grantees are required by laws other than the Perkins Act to provide supplemental services to handicapped and disadvantaged vocational students. Every LEA is subject to the federal Education of the Handicapped Act, which requires "free and appropriate" public educations for all handicapped students, including handicapped enrollees in vocational programs. Some LEAs are also subject to more stringent requirements to serve the handicapped under state special education laws. Although the disadvantaged as a class lack equal claims to supplemental services, at least one subcategory of the disadvantaged, LEP students, does enjoy some of the same federal civil rights-type entitlements to services as the handicapped. In addition, some states mandate extra help for other kinds of disadvantaged students, such as those who require remedial instruction to pass state minimum-competency tests. Under such requirements, LEAs would have to incur excess costs for Perkins target-group students even in the absence of the Perkins Act. Consequently, for reasons spelled out above, the grantees are likely to be able to demonstrate compliance with the Perkins supplemental services and excess cost rules without adding anything to the services they would have provided and the excess costs they would have incurred anyway.

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[53] This assumes, first, that compliance with the supplemental services and excess cost requirements is enforced--a condition taken for granted in this discussion but not in the subsequent discussion of targeting effectiveness in practice--and, second, that grantees do not choose to forego federal grants rather than comply with these and other Perkins rules--a possibility also discussed below.

For handicapped secondary students, in particular, the Perkins rules seem to add little, if anything, to state and local obligations to provide supplemental services. Federal and state special education laws compel LEAs to incur much greater excess costs for the handicapped than anything required by Perkins, thereby rendering the Perkins constraints largely nonbinding.[54] The probable result, therefore, is that Perkins funds earmarked for handicapped secondary vocational students will be used mainly to help pay for services that states and LEAs were obliged to provide anyway under these other laws. If so, Perkins funds will be mainly substitutive: they will displace some nonfederal funds that grantees would otherwise have had to devote to serving the handicapped in vocational education, freeing such funds to be used for other purposes.[55]

In sum, the supplemental services and excess cost requirements, if fully implemented and enforced, would guarantee the existence of certain minimum resource differentials in vocational education in favor of handicapped and disadvantaged vocational students, but they would not necessarily ensure that federal aid buys services that would otherwise not have been provided. Their effectiveness in the latter respect is likely to be highly variable among grantees. In essence, only grantees that would otherwise have done little or nothing extra for the handicapped or disadvantaged would be constrained to spend Perkins funds additively on services for the target groups. Other grantees would be able to demonstrate compliance on the basis of excess costs that would have been incurred anyway, and thus would be free to substitute their Perkins set-aside funds for funds from state or local sources. It is especially unlikely that the Perkins rules will generate incremental services for handicapped enrollees in secondary-school vocational programs because such students already enjoy much stronger claims to supplemental services under other federal and state laws.

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[54] Estimates from studies such as Kakalik (1973) and Moore (1988) indicate that LEAs typically spend twice as much per handicapped student as per regular student, which means that the excess cost per handicapped student is of the same magnitude as total outlay per regular student. The excess costs required under the Perkins Act are likely to be only a small fraction of that amount.

[55] It has been alleged, however, that the provisions of the Education of the Handicapped Act and other laws pertaining to the handicapped have not been implemented and enforced as well in vocational education as in other areas of secondary education. If so, the effect of Perkins grants could be to induce LEAs to serve more of their handicapped students in vocational rather than nonvocational programs. The corresponding net fiscal effect would be primarily a shift in excess costs from nonvocational to vocational programs for the handicapped rather than a net increase in excess costs incurred for the whole handicapped population.

Likely Targeting Effectiveness in Practice

There are at least four reasons why the supplemental services and excess cost rules can be expected to be substantially less effective in practice than in principle: (1) there are major gaps, ambiguities, and loopholes in the definitions of supplemental services and excess costs, (2) grantees are free to take the Perkins fiscal requirements into account when deciding which students and how many students to include in the target groups, (3) grantees are also free to take the requirements into account when deciding how to serve students in Perkins-funded programs, and (4) the full compliance with the letter of the statute and regulations that was assumed in the foregoing discussion of potential effectiveness is unlikely to be obtainable in practice. Consider the implications of each of the above for resource allocation and targeting.

Gaps, ambiguities, and loopholes in the rules obviously work to the advantage of Perkins grantees that want to minimize their fiscal obligations under the Act. By defining supplemental services as broadly and loosely as the regulations (and OVAE/ED interpretations) allow and choosing the least constraining permitted methods of quantifying excess costs, grantees can comply with the rules while providing fewer supplemental resources than more rigorous interpretations would require. The following are examples of some of the ways in which grantees can exploit the looseness of the definitions to hold down the fiscal burdens of compliance:

1. Grantees can claim as "supplemental" items that would not qualify under a strict definition of that term. For instance, OVAE will apparently accept as "supplemental" the full costs of specialized equipment or materials for handicapped or disadvantaged students, not just the amounts in excess of the costs of regular equipment and materials.

2. In the absence of guidelines on resource pricing, grantees can inflate their supplemental costs by assigning relatively highly paid personnel to target-group students (especially in separate programs) and then claiming seniority-based or training-based pay differentials as excess costs.

3. Because OVAE has not specified precisely the allowable components of excess costs, grantees can manipulate their claimed costs by including or excluding, as convenient, various elements of the indirect costs of programs.

4. Because there is ambiguity about the appropriate bases of comparison to use in calculating the excess costs of special programs for the handicapped or disadvantaged, grantees can select the so-called comparable regular programs that result in the highest estimates of excess costs incurred for the Perkins target-group students.

Every extra dollar of excess costs claimed by these means is a dollar that the grantee does not have to contribute from its own funds to provide services for handicapped or disadvantaged vocational students. Each such dollar can be used according for purposes of the grantee's choosing rather than for purposes specified by the federal government. Grantees have strong incentives, therefore, to claim whatever supplemental services and excess costs the rules allow, up to the amounts needed to exhaust their Perkins grants.

Further opportunities for minimizing the effects of the supplemental services and excess cost provisions arise out of the elasticity of the Perkins target-group definitions and student selection rules (discussed in Chapter 3) and the consequent possibility of taking the fiscal implications into account when deciding how target groups should be defined. In general, grantees can relieve themselves of fiscal obligations by including in the target populations students to whom supplemental resources would have been provided, and for whom excess costs would have been incurred, even in the absence of the Perkins Act. The following are some specific illustrations.

1. All handicapped vocational enrollees in secondary schools carry with them claims to supplemental services that would have to be satisfied regardless of the Perkins Act (i.e., claims to the special services prescribed in their IEPs). Therefore, including them in the target groups is fiscally advantageous, as it allows some excess costs that would have to be paid anyway to count towards satisfying the Perkins requirements.

2. The same may apply to LEP students in vocational programs, for whom certain extra costs of language-related services might have to be incurred regardless of the Perkins requirements.

3. Academically disadvantaged students who require remedial instruction in basic skills, and who would receive such instruction regardless of the availability of Perkins funds, also are attractive target-group members for essentially the same reason: costs of providing remedial basic skills instruction to such students count as excess costs under Perkins if the state says such instruction is "necessary" to accomplish the purposes of the Act.

4. It makes sense for similar reasons to include in the target groups any handicapped or disadvantaged vocational students for whom greater-than-normal costs must be incurred because of the settings or locations in which the students are served--e.g., students in magnet schools, special schools for delinquents, and alternative schools for dropouts. Again, the excess costs, which would have been incurred anyway, count toward satisfying the Perkins requirements.

The effects of these purposeful approaches to defining the target groups are to reduce the fiscal additivity of Perkins grants for the handicapped and disadvantaged by allowing grantees to spend federal aid on services that would otherwise have been supported with nonfederal funds. Although one might think that such fiscal substitution constitutes prohibited "supplanting," the Perkins nonsupplanting rule, as interpreted by OVAE/ED, is so weak that it poses little if any obstacle to the tactics suggested above (see Chapter 6).

Opportunities for grantees to minimize the effects of the supplemental services and excess cost rules by selecting certain program designs are implicit in the previously enumerated "loopholes" in the definitions of supplemental services and excess costs. Special opportunities to overstate, or "construe liberally," the excess costs of serving target-group students are associated with certain types of resources and services. It follows that grantees have something to gain by choosing the types of services most susceptible to "excess cost inflation." This could mean favoring separate programs for the disadvantaged over mainstreamed programs (see the comments on incentives and side effects, below) or, in mainstreamed programs, favoring services whose supplemental character is inherently difficult to verify. It could also mean, for reasons already mentioned, favoring remedial basic skills as a Perkins-funded service or using Perkins funds to purchase equipment for handicapped and disadvantaged students. To the extent that grantees do select services on this basis, the additivity of Perkins funds and the net impact of the Act on services for target-group students would both be reduced.

Finally, it seems obvious that one cannot expect perfect compliance with the rules in practice. Actual compliance is likely to be a function of, among other things, the intensity of monitoring, auditing, and other enforcement activity and the severity and probability of penalties for violations. It is noteworthy in this regard that the OVAE/ED officials interviewed for this study indicate that levels of federal compliance-oriented activity have been very low (by historical standards) in the years that the Perkins Act has been in effect. Apparently, there are few if any federal program audits of vocational education programs supported with Perkins funds, and even the routine fiscal audits have been diluted under the Single Audit Act.[56] Consequently, in addition to the many opportunities available to grantees to minimize the fiscal impacts of the rules while complying fully with the letter of the law, even the latter type of formal compliance cannot be taken for granted.

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[56] The Single Audit Act (P.L. 98-502), as its name implies, requires consolidated audits of all federal financial aid to a local entity provided by a given federal agency (in this case, the Education Department) instead of separate audits of aid provided under particular statutes or programs, such as Perkins grants. The auditors, consequently, are likely to be less intimately familiar with the specialized fiscal provisions and subtleties of the individual programs, and the rigor of enforcement is likely to be correspondingly reduced.

Necessity and Burden

Vocational educators have frequently claimed that the Perkins excess cost rules are unnecessary and overly burdensome. Usually, necessity and burden are thought of as separate issues, but logically they should be considered together. Presumably, the more necessary the rules are for accomplishing the purposes specified by Congress, the more burden is justified; and conversely, the greater the burden, the greater the need to demonstrate that an important purpose is being served.

Before judging whether the rules are necessary, one must specify necessary for what. Necessity is considered here strictly in relation to the resource allocation goals expressed or implied in the statute--namely, that federal aid should buy extra services for handicapped and disadvantaged students, over and above services that other students receive, and that it should add to the resources that would have been available for handicapped and disadvantaged students in the absence of the federal grant programs. Some critics call the rules unnecessary, or "unduly restrictive," because they constrain grantees to do the very things called for by Congress--to spend money on extra services for special-need students instead of according to the grantees' own priorities. But that is a complaint about the legitimacy or importance of federal goals rather than about whether particular rules are necessary for accomplishing them, and so it is outside the bounds of the necessity issue, as understood here.

Necessity is difficult to prove because it depends on how grantees would behave in hypothetical situations. Everyone would favor abolishing the rules if it were assured that handicapped and disadvantaged vocational students would be treated as well without them as with them. It is possible, of course, that this is exactly what would occur, but to believe it is to discard the evidence that motivated Congress to impose the present constraints. That evidence, in brief, is that many states and LEAs, prior to the Perkins Act, served relatively few handicapped and disadvantaged students in their vocational programs; frequently served them in low-quality programs; sometimes failed to spend even earmarked federal dollars, much less their own dollars, on such students; and often did not provide the supplemental, higher-cost services called for by law.[57] It was in reaction to such findings that Congress formulated the supplemental services and excess cost rules found in the current Act.

It is possible, of course, that hearts and minds have changed, but until that is confirmed, there is little basis for judging the constraints less necessary than before. A prudent conclusion today, based on past behavior, is that without federal requirements to spend certain sums on supplemental services, especially for the disadvantaged, many states and LEAs would not allocate vocational education funds, federal or nonfederal, for that purpose. There is little reason, as yet, to alter the conclusion reached by the NIE Vocational Education Study in 1981: the supplemental services and excess cost requirements are flawed and need to be improved in various ways, but without them it is likely that federal aid would mainly supplant state and local funds and not produce the extra services for the target populations that Congress intended.

Turning to the burden issue, there is no doubt that the supplemental services and excess cost requirements impose significant administrative costs and burdens on grantees. To demonstrate compliance with the rules, states, LEAs, and postsecondary institutions must keep records that they probably would not keep otherwise. In particular, they must document the supplemental nature of resources (in mainstreamed programs) purchased with federal funds and must maintain accounting records adequate to document excess costs. Beyond these paperwork burdens, administrators are obliged under the federal rules (theoretically) to control the uses of resources in ways that would otherwise be unnecessary--e.g., by ensuring that nominally supplemental resources, such as the time of teacher aides, are in fact devoted to serving target-group students.

There seems to be some tendency, however, to misstate the degree to which these administrative burdens are attributable to the supplemental services and excess cost rules per se, rather than to more general and more standard requirements of federal grant programs. For example, it seems not to be appreciated that recipients of federal education grants are generally required, under Part 74 of the Education Department General Administrative Regulations (EDGAR), to keep time and effort records for personnel paid with federal funds, records of equipment purchased with federal funds, and other records of the very kinds needed to calculate excess costs. These fiscal accountability requirements would presumably remain even if the supplemental services and excess cost rules were repealed. Nevertheless, it is still true that the supplemental services and excess cost rules impose drains on administrative resources that otherwise would not exist.

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[57] The final report of the NIE Vocational Education Study (1981) summarizes both the evidence on these matters that was presented to Congress before enactment of the 1976 Education Amendments and the evidence that was produced for the NIE study itself on services for special-need students during the period 1977-1980. The report of the Senate Committee on Labor and Human Resources on the Senate bill (S.2341) that introduced many of the provisions now in the Perkins Act recapitulates the aforementioned evidence from the NIE Vocational Education Study and cites later testimony to the effect that, as of 1984, special-need students were still being inadequately served in vocational programs (Senate Report No. 98-507, 98th Congress, 2nd Session, June 7, 1984).

How does one balance these burdens against the necessity of ensuring that federal aid translates into supplemental services and excess costs? Lacking quantitative data on both the burdens and the (presumed) allocative improvements stemming from the rules, there is no way to say whether, in the aggregate, the benefits justify the costs. However, at least two points should be noted about the relative balance in different situations: First, the supplemental services and excess cost rules seem pointless as applied to Perkins set-aside funds for handicapped secondary students. The reason, as previously explained, is that handicapped students have rights to extra services and financial support under other laws that are much farther-reaching than their claims under Perkins. If the handicapped need anything more, it is not redundant excess cost rules under Perkins but rather a clear message that their claims to appropriate services are as strong in vocational programs as elsewhere.

Second, the balance between necessity and burdens is clearly less favorable for small grantees than for large ones. Some small LEAs are probably entitled to less in Perkins aid for the handicapped and disadvantaged than it would cost to maintain special records on resource use (TEM Associates, Inc. and MPR Associates, Inc., 1987). Whether such LEAs should be eligible to receive Perkins funds at all is an issue worth considering, since it is not evident that anything worthwhile can be done with such minuscule amounts of special-purpose money; but assuming that they will remain eligible for grants, it clearly it makes no sense to impose upon them the same administrative requirements as apply to larger units. Thus, even if the supplemental services and excess cost rules are necessary in general, some relief for small grantees seems desirable.

Ranging more broadly, it is possible that other methods can be developed for accomplishing the purposes of the supplemental services and excess cost rules for which the balance between benefits and burdens is better. One alternative, the model established for the handicapped under P.L. 94-142, is to set standards for the services that individual students must receive, regardless of the funding source, rather than to insist that federal dollars translate into supplementary services. A tentative shift to such an approach in vocational education is discernible in the service mandate provisions of Sec. 204(c) of the Act. Fully developed, this approach could supersede the present supplemental services/excess cost strategy. This possibility is explored in Chapter 7.

Incentives and Side Effects

Certain incentive effects of the supplemental services and excess cost rules have already been discussed. This section deals with three frequently mentioned incentives that have not yet been adequately examined. These are (1) incentives affecting the choice between mainstreamed and separate programs, (2) incentives to provide ancillary services rather than improved vocational instruction, and (3) incentives to "opt out" of the Perkins programs for special-need (especially disadvantaged) students.

Prior to the Perkins Act, the federal vocational education program unquestionably created a strong and overt fiscal incentive to serve handicapped and disadvantaged vocational students in separate rather than mainstream programs, notwithstanding explicit Congressional assertions that the opposite was intended.[58] The final regulations issued pursuant to the 1976 Education Amendments allowed grantees to use Perkins funds to pay only 50 percent of the *excess* costs of mainstreamed programs, but 50 percent of the *total* costs of separate programs. This meant that a grantee had to pay half the excess cost of a mainstreamed program from its own funds but could operate a separate program without drawing on its own funds at all. Although this incentive was widely condemned as perverse and contrary to Congressional desires, it remained in effect through 1985.[59]

Eliminating the tilt in favor of separate programs became an important item on the agenda of the drafters of the Perkins Act. The 1984 Senate bill would actually have reversed the incentive by allowing grantees to use federal funds for 100 percent of excess costs in mainstreamed programs but only 50 percent in separate programs.[60] However, the conference committee adopted what it considered a fiscally neutral provision, requiring 50-50 sharing of excess costs in both mainstreamed and separate settings. The conference committee's report addressed the incentive issue explicitly, stating that

> ...it is not the conferees' intent in any way to encourage the creation of separate programs for handicapped or disadvantaged students. Rather, it is intended that the limitation of the federal share for non-mainstreamed classes to 50 percent of

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[58] The 1976 Education Amendments required states to use funds set aside for the handicapped and disadvantaged "to the maximum extent possible, to assist [such] individuals to participate in *regular* vocational education programs" (P.L. 94-482, Sec. 110(d), emphasis added).

[59] See., e.g., NIE Vocational Education Study (1981), Benson and Hoachlander (1981), and Hoachlander, Choy and Lareau (1985).

[60] U.S. Senate, Committee on Labor and Human Resources, *Report to Accompany S.2341*, Report No. 98-507, 98th Congress, 2nd Session, p. 36.

the costs above any average per pupil expenditure will eliminate any financial incentive to place students in such classes.[61]

But elimination of the overt incentive does not necessarily mean that neutrality has been achieved. There are two respects in which the Perkins supplemental services and excess cost rules may still make it attractive to place handicapped or disadvantaged students in separate programs. First, the loose rules for measuring excess costs may make it fiscally advantageous to operate separate programs. These rules, as explained earlier, allow grantees to use various devices (indirect costs, resource pricing, equipment purchases, etc.) to claim excess costs greater than the true incremental costs of supplemental services. Because such opportunities are more limited in mainstreamed settings, separate programs may allow grantees to satisfy the excess cost requirement at lower net costs to themselves. Second, the preceding point is reinforced by the greater compliance risk associated with mainstreamed programs, namely, that items labeled supplemental by grantees might be deemed nonsupplemental by federal or state auditors. Recall that grantees are required in connection with mainstreamed programs, but not separate programs, to identify specific supplemental resources and that demonstrating that certain resources are supplemental is sometimes difficult. Therefore, the combination of two incentives--greater opportunities for claiming excess costs and reduced risk of audit exceptions--may induce grantees, even under the current Act, to favor separate-program designs.

The same risk factors may also influence grantees to favor services whose supplemental character is easy to demonstrate and to avoid other services, possibly of greater educational value, whose supplemental nature is more difficult to prove. Specifically, there seems to be reason for concern, based on findings from recent NAVE-sponsored surveys and case studies (Swartz, 1989; Millsap et al., 1989), that several Perkins provisions, including the supplemental services and excess cost rules, motivate grantees to spend Perkins funds on ancillary services for the handicapped and disadvantaged rather than on improved or intensified vocational instruction. The attraction of ancillary services is that they are more likely to be discrete, distinct, and unambiguously supplemental. For example, target-group students can be offered special tests, assessments, and guidance and counseling activities that regular vocational students do not receive. In contrast, improvements in instruction are more likely to involve quantitative differences in resource inputs (e.g., additional teacher time or greater access to equipment) or resources whose uses within the classroom are hard to document (e.g., the time of teacher aides). The fear of audit problems, therefore, may discourage grantees from upgrading instruction with Perkins funds. This bias in favor of ancillary services is also reinforced by several other features of the Perkins Act--namely, that Sec. 204(c) mandates certain ancillary services, that Perkins grants are likely to be too small to support significant improvements in instruction, and that uncertainty about future federal aid makes grantees reluctant to use federal funds to hire instructional staff. The net effect is probably that ancillary services are oversupplied and instructional services are undersupplied, relative to what would be educationally optimal.

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[61] Conference Report on H.R. 4164, October 2, 1964, Congressional Record--House, p. H 10778.

A final concern about perverse incentives under the Act is that the supplemental services and excess cost rules (and the associated matching requirements) may undercut federal goals by inducing some grantees to "opt out" of the programs for handicapped and disadvantaged students. A grantee can opt out by declining to apply for or accept its Perkins funds for a particular program. According to the Perkins regulations, an eligible recipient has the right not to participate and, if it exercises that right, is under no obligation to provide supplemental services or resources to that program's intended beneficiaries.[62] A grantee can also turn back a portion of its earmarked Perkins funds to the state, thereby reducing proportionately its obligation to provide matching funds from nonfederal revenues. Conceivably, if the Perkins rules cause some grantees not to participate, the net effect could be to reduce, rather than to increase the services provided to handicapped and disadvantaged vocational enrollees in that grantee's schools.

Whether opting out, or turning back Perkins funds, is an important problem is in dispute. Benson and Hoachlander (1981) suggested that opting out could defeat efforts to increase services for the target populations. More recently, Hoachlander (1988) cited turnbacks of funds as reasons to abolish the excess cost and matching rules. Some OVAE officials believe that significant amounts of Perkins aid, especially for the disadvantaged, may go unspent, but others dismiss the problem as minor and temporary. No one seems to be claiming that turnbacks, even from the initial year of the Perkins Act, will amount to more than a few percentage points of available funds. It seems likely that opting out is a transient phenomenon and that LEAs will cease to refuse aid once they have learned how to redeploy funds to satisfy the Perkins rules.

Two features of the requirements are said to encourage opting out. One is that the administrative burdens (discussed earlier) may outweigh the benefits, especially for smaller recipients, of accepting Perkins funds (NIE Vocational Education Study, 1981; Benson and Hoachlander, 1981). The other is that the Perkins requirement for 50-50 matching of excess costs may require of grantees contributions that they are unwilling to make to federally prescribed programs and target groups. It appears to be the matching requirement, rather than the supplemental services and excess cost requirements as such, that creates the strongest incentive for some grantees not to accept and use their Perkins funds. The incentive effects of the matching requirement, including possible incentives to refuse aid, are discussed in the following chapter.

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[62] The following question and answer appeared in the material accompanying the Perkins regulations: "*Question.* Is every recipient that is eligible to receive funds under Title II. Part A for handicapped and disadvantaged persons required to accept and use these funds? *Answer.* No. There is no statutory requirement that all agencies eligible to receive funds for handicapped and disadvantaged persons are required to participate in Federally supported vocational education programs for these populations" (50 FR 33302).

SUMMARY: FINDINGS AND POLICY OPTIONS

The supplemental services and excess cost requirements, and the associated matching requirement, are the main instruments in the Perkins legal framework for ensuring that federal aid translates at least partly into extra services for handicapped and disadvantaged vocational students. Without them, the Perkins grants earmarked for special-need students would amount to little more than general-purpose fiscal assistance to states, LEAs, and postsecondary institutions. Properly implemented and enforced, these rules would create resource differentials in vocational education in favor of the handicapped and disadvantaged. In principle, given the 50-50 matching requirement, these differentials should amount, in the aggregate, to at least *twice* the amount of earmarked federal aid.

The effectiveness of the rules is likely to be much lower in practice than in principle, however, partly because compliance with such rules is inherently difficult to enforce but mainly because OVAE/ED has not issued specific, detailed, and rigorous guidelines as to what constitute supplemental services and how excess costs are to be measured. Excess cost measurement, in particular, is a technically complex process and one that, in the absence of specific rules, affords grantees ample opportunity to claim more excess costs than they actually incur. Grantees have strong incentives to claim all the excess costs the rules allow, since each dollar so claimed is one less dollar that a grantee must contribute from its own funds to serve the federally specified target groups. At the same time, each dollar by which excess cost is overstated is a dollar lost to handicapped and disadvantaged students and a federal dollar converted into general aid.

Specifically, among the major "loopholes" in the present sketchy excess cost rules are that

- OVAE/ED has formulated no operational criteria for identifying legitimate supplemental resources in mainstreamed programs;

- Grantees are apparently allowed to claim as "excess" the total costs of certain services and resources (especially costs of equipment) for the handicapped and disadvantaged, not just the portion that exceeds the cost for regular students;
- OVAE/ED's interpretation that indirect costs may be included in excess-cost computations permits grantees to spend Perkins funds on services that would have been provided anyway;
- The lack of any OVAE/ED guidelines on how instructional personnel and other resources should be priced for the purpose of cost comparisons creates major opportunities for inflating excess costs; and
- Vague definitions of the comparable regular programs against which special programs for the handicapped and disadvantaged are to be compared invite grantees to select standards of comparison that will yield the highest excess costs.

In addition, the loose target-group definitions create additional opportunities to comply with the excess cost rules without actually spending more than what would have been spent anyway on special-need students. In particular, grantees can minimize their obligations by selecting students for whom substantial excess costs would have been incurred even in the absence of the Perkins Act, such as handicapped students served under P.L. 94-142 and disadvantaged students receiving remedial basic skills instruction.

The rules may also have certain adverse side effects on educational programs. Although a strong pre-Perkins incentive to serve the handicapped and disadvantaged separately has been eliminated, weaker incentives favoring separate programs remain. Concerns about compliance may lead some grantees to spend federal funds on distinctive, unmistakably supplemental ancillary services rather than on upgrading vocational instruction. The fiscal and administrative burdens associated with the rules, especially the obligation to contribute matching funds, may even induce some grantees to "opt out" entirely, especially of the program for the disadvantaged.

Even if the supplemental services and excess cost rules were tightened and the loopholes eliminated, their contribution to the additivity of federal aid would still be limited in one fundamental respect: such rules, even in theory, do not necessarily require grantees to incur excess costs greater than would have been incurred anyway. Whether they do so in any particular instance depends on how the grantee would have treated its handicapped and disadvantaged students in the absence of the Perkins requirements. Grantees, in demonstrating compliance, may claim credit for excess costs that would have been incurred anyway (e.g., pursuant to the requirements of other federal or state laws) and thus are free, without violating the excess cost rules, to divert like amounts of Perkins set-aside funds to other uses. Thus, the excess cost rule is not equivalent to, or a substitute for, a nonsupplanting requirement and does not obviate the need for establishing an effective nonsupplanting requirement under the Perkins Act (see the findings on nonsupplanting in Chapter 6).

In light of the foregoing findings, two kinds of policy options need to be considered: options for increasing the effectiveness and otherwise improving the existing supplemental services and excess cost requirements and options for augmenting or superseding these requirements with other targeting provisions. These may be thought of as "tactical" and "strategic" options, respectively. The former derive from the detailed technical discussions of supplemental services and excess costs in this chapter; the latter are treated in later chapters and so are referred to only briefly below.

Assuming that the supplemental services and excess cost rules retain their roles as the main targeting provisions of the Act (i.e., that no strong nonsupplanting or service mandate provisions are created--see Chapters 6 and 7), strengthening these rules is the main thing that can be done to enhance the additivity of Perkins grants. This entails clarifying the definitions of supplemental services and specifying how excess costs are to be quantified.

Clarifying the definition of supplemental services is important both to deter grantees from claiming items that are not truly supplemental and to eliminate unintended incentives to channel federal funds into services that are unambiguously supplemental but not necessarily educationally valuable. Under this option, supplemental resources and services would be defined in detail in program regulations or guidelines, and examples would be provided of appropriate supplemental services for the different target groups. The latter would make clear to grantees that outlays for augmenting and intensifying vocational instruction for target group members--reducing class sizes, providing teacher aides, adding instructional time, etc.--are not only acceptable but also desirable uses of federal aid.

Strengthening the excess cost requirement means specifying in operational detail, in regulations or guidelines, how excess costs are to be defined and measured. It means eliminating the many loopholes that now permit grantees to claim spurious and overstated excess outlays on behalf of target-group students. To make the requirement more effective and less leaky, detailed rules for quantifying excess costs would be developed and incorporated into regulations or program guidelines. These would (a) identify eligible and ineligible categories of excess costs, (b) stipulate how the various types of educational resources, specifically including the services of teachers and other staff, are to be valued for the purpose of excess-cost comparisons, (c) explain which portions of the cost of certain types of expenses (e.g., equipment outlays) qualify as excess costs, and (d) define the costs of regular programs, or other standards of comparison, against which costs of serving the handicapped and disadvantaged should be compared. With respect to the last of these, it should be recognized that it is often infeasible to make comparisons at the level of the individual program between costs of serving target-group students and regular students, and provisions should be considered for making cost comparisons at a higher level of aggregation. These could be based, for example, on comparisons of the average costs incurred for target-group and nontarget-group students in broader occupational categories, such as business occupations, technical occupations, agriculture, etc.

In conjunction with the changes laid out above, it would be desirable to specify clearly the types of accounting and other records that grantees need to keep to demonstrate that they are incurring excess costs in at least the required amounts for target-group students. These requirements (and perhaps other aspects of the cost comparisons) should probably be differentiated by size of grant to avoid imposing pointless burdens on recipients of small amounts of aid. (Alternatively, consideration might be given to establishing aid thresholds below which quantification of excess costs would not be required.)

Turning to the strategic options, there are at least two alternative methods of promoting the additive use of Perkins grants, still within the framework of the existing Act (broadly construed), that do not depend primarily on stronger supplemental services and excess cost rules. One is to make the Perkins supplement, not supplant rule rather than the excess cost rule the central targeting provision. That rule, as explained in Chapter 6 is now virtually useless, as it has never been implemented by OVAE/ED or applied specifically to Perkins grants for the handicapped and disadvantaged. However, if the nonsupplanting rule were appropriately interpreted and implemented--and, most important, backed-up by specific operational tests of supplanting--it could be made into a broader and more potent additivity-enhancing tool than the inherently limited excess cost requirement. In fact, a broad nonsupplanting provision would subsume the excess cost requirement, in that the same kinds of cost comparisons as are called for by the latter would be among the tests used to ensure that supplanting has not occurred.

The second major alternative to strengthening the supplemental services and excess cost rules is to abandon the emphasis on additivity of federal aid in favor of the service-standard strategy reflected (embryonically) in the service mandate provisions (Sec. 204(c)) of the present Act. The principal concern under such a strategy would not be whether federal funds are buying supplemental services but rather whether the target-group students are being served adequately or in accordance with their needs. The prototype for this alternative approach is the requirement in P.L. 94-142 that LEAs serve all their handicapped children "appropriately." If a similar requirement applied to handicapped and disadvantaged enrollees in vocational programs, how federal funds were used would cease to be of interest. The only relevant issue would be whether services for target-group members, regardless of how financed, satisfy the federal standards. This alternative strategy is examined at length in Chapter 7.

5. THE MATCHING REQUIREMENT

Much has already been said in Chapter 4 about the Perkins requirement for state-local matching of the federal contribution to excess costs. The emphasis in this chapter is on whether or how matching reinforces the effects of the excess cost rules and alters the constraints and incentives facing state and local authorities. To set the stage, the discussion begins with a summary of the evolution of the Perkins matching rules and a recitation of some general findings about matching requirements from the economic literature on intergovernmental aid.

DESCRIPTION AND EVOLUTION

Requirements for state-local matching of federal vocational education aid were included in the Vocational Education Act (VEA) of 1963 and have been present in the law ever since, but the applicability of these requirements to aid for the handicapped and disadvantaged has varied over the years. The 1963 Act (P.L. 88-210) imposed a 50-50 matching requirement on all vocational education grants to states by specifying that federal funds were to be limited to 50 percent of a state's expenditures for each of six authorized purposes (Sec 6(b)). The inclusion among these purposes of vocational education for persons with "academic, socioeconomic, or other handicaps" (Sec.4(a)(4)) established a separate requirement for dollar-for-dollar matching of federally funded expenditures for the disadvantaged.[63] However, no federal aid was specifically earmarked for disadvantaged (or handicapped) students under the 1963 Act, and so this separate matching requirement did not apply to any particular sum of federal funds. The Vocational Education Amendments of 1968 (P.L. 90-576) introduced specific set-asides of federal funds for the handicapped and disadvantaged but substituted an aggregative matching requirement for the former separate matching requirements for each purpose (Sec. 124(a)). Consequently, between 1968 and 1976, no obligation was placed on states or grantees to match separately the federal funds allocated to programs for handicapped and disadvantaged students.

The Education Amendments of 1976 (P.L. 94-482) retained the set-asides and instituted a requirement for separate matching of federal funds allotted to certain "national priority programs," two of which were vocational services for the handicapped and disadvantaged. Under this requirement, states were required to match, dollar for dollar, the 20 percent of each state's aid allotment reserved for the disadvantaged and the 10 percent set aside for the handicapped (Secs. 110(a), 110(b)). Moreover, as explained in the previous chapter, a very important requirement was established by regulation: grantees were restricted to spending set-aside funds for only the excess costs of programs for handicapped and disadvantaged students. Thus, the 1976 Act altered the matching requirement in two essential respects: first, it reinstituted separate matching of federal aid for the handicapped and disadvantaged; second, it sharpened the matching requirement and gave it force that it previously lacked (for reasons to be explained below) by applying it to the excess costs of programs for target-group students.[64]

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[63] The term "academic, socioeconomic, and other handicaps" did not cover what are now called handicapping conditions but applied instead to students now called "disadvantaged." This distinction was brought out clearly in the 1968 Amendments (P.L. 90-576), which retained the terminology of the 1963 Act but added a separate category of persons with "handicapping conditions."

Under the Perkins Act, the requirements for separate matching of federal funds for the handicapped and disadvantaged have been retained, and the rule that both federal funds and state-local matching funds must be used only to pay excess costs has been incorporated into the statute. Currently, 50-50 state-local matching is required of both the 22 percent of Perkins funds earmarked for the disadvantaged (including LEP students) and the 10 percent earmarked for the handicapped (P.L. 98-524, Secs. 201(c) and 502(a)(3)(A)). The Congress has also made clear that the requirement to match excess costs applies regardless of whether target-group students are educated separately or in regular classrooms, thereby abolishing the distinction in the previous law between the two service modes.

A notable feature of the matching requirement since its inception is that the rate at which states are required to match federal vocational education aid has always been either zero or 50-50. Moreover, the rate has always been nationally uniform, with no provision for variation in relation to state or local fiscal capacity or other relevant factors. In the cases of matching of aid for the handicapped and disadvantaged, the 50-50 ratio has even survived the transition from matching of total costs to matching of only the excess costs of programs.

Certain aspects of the matching requirement that have been left undefined or incompletely defined in the statutes have been clarified in regulations or through less formal OVAE/ED guidance or, in some cases, through statements of intent in Congressional committee reports. Among the most important issues so treated are (1) whether the requirement applies statewide or to individual grantees; (2) whether the obligation to provide matching funds falls on state or local agencies; (3) whether the requirement applies to particular programs, activities, and services or only to broad purposes such as vocational education for the handicapped; and (4) whether the state-local contributions must be "in cash" or "in kind." The official positions on these matters, which in most instances have remained constant over the years, are summarized below.

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[64] Shortly after the Education Amendments of 1976 took effect, this tightened matching requirement was relaxed in two respects. First, as explained in the previous chapter, the requirement to match only excess costs was partly undone by allowing LEAs to claim as "excess" all costs of separate programs for the handicapped and disadvantaged. Second, in the 1979 technical amendments to the VEA, Congress allowed, in effect, for state-local matching at less than a 50 percent rate in cases of alleged financial inability of grantees to provide programs (P.L. 96-46, Sec. 5(b)).

The matching requirement in vocational education has always been interpreted as only a statewide requirement. That is, a state as a whole must be able to demonstrate dollar-for-dollar matching of federal funds, but matching at the individual LEA or institution level has not been required. The regulations in force under the 1968 Amendments stated explicitly that "the non-Federal share of expenditures under the State plan may be on a statewide basis" (45 CFR 102.133(b), Feb. 25, 1975). Similarly, the regulations adopted subsequent to enactment of the Education Amendments of 1976 say that "the State's matching share of expenditures under the annual program plan may be on a state-wide basis" (45 CFR 104.302(b), 10/3/77). Interestingly, such language does not appear in the rules adopted pursuant to the Perkins Act. Nevertheless, OVAE/ED officials have made clear that they stand by the interpretation that matching of aid for the handicapped and disadvantaged (and for other purposes) is required only on a statewide basis, and states have been advised and act accordingly.

The issue of whether state or local agencies should provide the required matching funds has essentially been left to each state to resolve for itself. The current Act says that

> A State shall provide the non-Federal share of costs of projects, services, and activities for handicapped individuals and for disadvantaged individuals ... *equitably from State and local sources*, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for those costs from local sources (34 CFR 401.97, emphasis added).

OVAE/ED has explicitly declined to supply a definition of "equitable," saying that it is up to each state to specify an equitable division "in the first instance" (50 FR 33288). The Department has indicated, however, that

> An equitable division could involve a range of cost-sharing percentages across eligible recipients based on relative local ability or any other reasonable criteria the State may choose (50 FR 33302).

According to OVAE/ED officials, states are free to adopt different matching strategies under these guidelines. One option is to satisfy the matching requirement wholly or in part with state funds. This could mean appropriating categorical state aid specifically for supplemental services to handicapped and/or disadvantaged vocational students or earmarking some portion of more general state aid for vocational education for that purpose. Another option is to "pass through" some or all of the matching obligation to local grantees. This could mean requiring each LEA or institution to provide a dollar-for-dollar match of the federal funds it receives, but it could also mean imposing different matching rates on different grantees. For instance, a state might choose to distribute Perkins funds for the handicapped and disadvantaged according to variable matching formulas of the kinds sometimes used to distribute general state aid to LEAs.[65] Note, therefore, that even if a state chooses to pass through the entire matching obligation to local grantees, this is not necessarily equivalent to requiring 50-50 matching by each aid recipient. Although no study has been done of how different states handle the matching requirement, OVAE officials say that practice spans the full range of options mentioned above.

Judging from the views expressed by the same officials, it is difficult to identify any plausible matching scheme that OVAE/ED, today, would reject as inequitable under the regulation cited above. For example, imposing the entire matching obligation on individual grantees has been deemed acceptable, even where some grantees have very limited fiscal capacity, despite the statutory stipulation that states shall provide matching funds if local recipients cannot be expected to do so themselves. Whatever Congress meant by specifying that the obligation to match must be distributed equitably has apparently not survived the translation into practice.

Matching has also been consistently interpreted in the regulations as applying only to the broad purposes, or uses of funds, set forth in the various Acts and not to particular federally funded programs, activities, or services. Thus, for example, the pre-1976 regulation says that "it is not necessary that Federal funds be matched by non-Federal funds for each school, class, program, or activity....(45 CFR 102.133(b), Feb. 25, 1975). A grantee need not show, for example, that it matches federal funds allocated to instruction in automobile repair, remedial instruction, or guidance and counseling for the disadvantaged, provided that it can demonstrate a 50-50 match of federal funds, in the aggregate, expended on supplemental services for disadvantaged students. In the same vein, an ED response to a question on the Perkins regulations states that

> matching requirements apply on a total program basis, for example, the program for disadvantaged persons or the program for handicapped persons [sic]. Therefore, non-Federal funds need not match Federal funds for each service or activity supported (50 FR 33300).

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[65] Long and Silverstein (1981) allude to variable matching formulas used by several states to distribute federal vocational education aid under the 1976 Amendments (i.e., prior to the Perkins Act).

Similarly, in responding to a comment on the regulations, ED affirmed that "the matching requirements [apply] in the aggregate and need not be applied on a project-by-project basis" (50 FR 33287).

These statements apparently mean that a state or grantee may claim as matching contribution for the handicapped any excess costs incurred for supplemental services to handicapped vocational students, less the costs charged directly against federal grants. The same applies, of course, to matching of aid for the disadvantaged. The claimable contributions are *not* limited to state or local funds spent on students who receive Perkins-funded services nor to costs of the particular programs or activities that are said to be supported with federal aid. For instance, an LEA that nominally spends its Perkins handicapped set-aside funds on equipment for the handicapped may claim as its matching contribution nonfederal funds expended on, say, teacher aides or guidance and counseling for handicapped vocational students.

The issue of whether matching must be "in cash" or may be "in kind" has received a surprising amount of attention, and the pertinent statutory provision was changed in a technical amendment enacted in November 1985. The original Perkins regulations, reflecting a statement of intent in the conference committee report,[66] stipulated that

> Unless otherwise provided by the regulations in this part, a State or eligible recipient may not use the value of in-kind contributions to satisfy a cost-sharing requirement under the State Vocational Education Program (34 CFR, Sec. 401.94(c)).

The technical amendment altered this rule by allowing in-kind matching of aid for the disadvantaged (*not* aid for the handicapped), in cases where an eligible recipient otherwise "cannot" provide the required contribution. The correspondingly revised regulation reads,

> Contributions from local sources towards the non-Federal share of the costs of projects, services, and activities for *disadvantaged individuals* under the Vocational Education Opportunities Program must be in cash or, to the extent the eligible recipient determines that it cannot otherwise provide the contribution, in the form of in-kind contributions, fairly valued, including facilities, overhead, personnel, equipment, and services (34 CFR, Sec. 401.97(b), emphasis added).

The present situation, then, is that looser rules apply in deciding what constitutes matching for the disadvantaged than for the handicapped.

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[66] Conference Report on H.R. 4164, House Report No. 98-1129, 98th Congress, 2nd Session, Item 236, p. 98.

The terms "cash" and "in kind" are not self-explanatory in this context. "Cash" apparently means contributions from current-year appropriated outlays of states, LEAs, or postsecondary institutions. "In-kind" contributions apparently include such things as donations (of equipment, materials, or services of unpaid personnel, as well as money), tuition receipts, items purchased by grantees in the past, and even imputed overhead costs (note that some of these would ordinarily be considered cash). Counting all these things as matching contributions obviously eases the task of demonstrating compliance with the matching requirement for the disadvantaged.

ASSESSMENT OF MATCHING REQUIREMENTS IN GENERAL

Before assessing the specific matching provisions in Perkins, it is helpful to consider more generally the rationale for state-local matching and the consequences of attaching matching requirements to federal aid. These matters have been examined extensively in the economic literature on state-local and intergovernmental finance.[67] Certain findings from that literature shed light not only on the Perkins matching requirement generally but also on some of its specific features and on possible alternative designs.

Purposes and Effects of Matching

It is generally understood that the fiscal objective of a federal matching requirement is to generate more total outlay for the aided program or service than would be generated if the same amount of federal aid were provided as nonmatching ("lump-sum") assistance.[68] Whether and to what degree this purpose will be achieved depends both on the form of the matching grant and on the grantees' demands for the federally-aided services. The pure form of matching grant most frequently discussed in the theoretical literature is an open-ended version, in which the federal government agrees to bear a stipulated fraction of the cost of whatever amount of the designated service the grantee chooses to provide (an example would be a federal offer to pay, without limit, 50 percent of whatever an LEA chooses to spend on vocational education of the handicapped.) This type of matching grant stimulates spending by, in effect, allowing the grantee to purchase the aided services at a "discount"--i.e., at a fraction of full cost. Under a dollar-for-dollar matching arrangement, it costs the grantee only 50 cents to buy each dollar's worth of services. According to standard models of state-local fiscal behavior, one would usually expect such a grant to generate more spending for the aided service than would have been forthcoming either in the absence of federal aid or if the same amount of aid had been provided in lump-sum (nonmatching) form.

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[67] A succinct theoretical discussion of the effects of different forms of intergovernmental grants, including various types of matching grants, appears in Wilde (1971); a theoretical analysis of matching and nonmatching grants that focuses more specifically on local school districts, is presented in Barro (1972). Many of the key theoretical and empirical issues concerning the fiscal impacts of matching and nonmatching grants are discussed in a series of papers in Mieszkowski and Oakland (1979).

[68] Certain nonfiscal rationales have also been offered, such as (1) that a matching requirement "screens" grantees by requiring them to demonstrate tangibly their interest in the aided program, and (2) that grantees will oversee and manage the aided activities more diligently if their own funds as well as federal funds are involved (General Accounting Office, 1980, cited in Long and Silverstein, 1981).

The types of grants used in vocational education are not open-ended, however, but closed-ended--that is, each grantee is entitled to no more than a fixed amount of aid, no matter how much that grantee is willing to contribute from its own funds. Once the aid ceiling is reached under a closed-ended grant, there is no longer a price effect, or discount, at the margin; further fiscal contributions by the grantee elicit no additional federal funds. A grantee that willingly spends more for the service in question than the amount required to match the fixed federal grant (i.e., "overmatches" federal aid) therefore ceases to be affected by the matching requirement. Federal aid in such cases, though nominally in matching form, effectively constitutes lump-sum assistance.

There is little doubt that the matching requirements attached to federal vocational education aid prior to the 1976 Amendments fit the pattern just described. Those requirements pertained to federal aid in the aggregate and were *not* linked either to funding for particular target groups, such as the handicapped and disadvantaged, or to excess costs. All states spent several times (often ten times) as much on vocational education as the amounts required to match their allotments of federal aid. This overmatching signalled that the federal matching requirement was not a relevant consideration in determining levels of state-local spending for vocational education. The same is true of the matching requirements applied since 1976 to most federal vocational education aid *other* than for the handicapped and disadvantaged, specifically including the matching requirements applicable to Perkins program improvement grants and grants for adults. The same conclusion does *not* apply to matching of aid for the handicapped and disadvantaged under Perkins, however, primarily because the linkage to excess costs alters fundamentally the character of the matching requirement.

Matching of Excess Costs

The concept of matching excess costs has received little explicit attention in the economic literature on intergovernmental aid, but one can fit such matching into the standard theoretical framework by thinking of supplemental services for target-group students as a separate and generally not very popular category of services. Stipulating that the item is relatively unpopular expresses the assumption that many grantees, in the absence of federal aid earmarked for excess costs, would be disinclined to incur such costs, or at least to incur them in the amounts desired by the federal government. The question, then, is how attaching a matching requirement to the earmarked aid can be expected to affect state and local spending for a good otherwise in relatively low demand.

Consider first the effect of simply earmarking federal aid for services not valued highly by the grantee, setting matching aside for the moment. For concreteness, suppose that the category in question is supplemental services for the disadvantaged. Presumably, if the grantee's attitude toward supplemental services is no worse than neutral, the grantee would accept the aid and provide what the government desires. (Some side benefit to the grantee can normally be anticipated in such transactions, as, e.g., in the form of "leakage" of some of the supposedly categorical funds into support for the grantee's general overhead.) The expected outcome, then, would be a level of spending for supplemental services roughly equal to the amount of earmarked federal aid. Assuming, somewhat more optimistically, that the grantee merely has a low demand, rather than disinterest or distaste, for providing supplemental services to the disadvantaged leaves the outcome essentially unchanged. This somewhat better-disposed grantee might be willing, in the absence of aid, to spend a small amount of its own funds for such services, but that contribution would probably be supplanted entirely by earmarked federal assistance. In sum, spending for supplemental services is unlikely to exceed the amount of earmarked federal aid, except where the grantee would have been willing, with no aid at all, to spend a substantial amount on its own.

How does a matching requirement alter this situation? In the absence of matching, the grantee can accept the federal aid and provide the specified supplemental services at no net cost to itself and with no diversion of funds from other, more favored activities. Once a matching requirement is imposed, this is no longer true. The grantee must now add to federal aid a contribution from its own funds to buy a service that, as we have assumed, it does not value very highly.[69] To do so, it must reduce spending on some other service that it values more. The fiscal response, under these circumstances, is likely to depend on a fine balancing among conflicting considerations.

Four situations can be distinguished. First, assume that at least a few grantees value supplemental services for the disadvantaged enough to support them generously on their own. The level of support provided by such grantees would be essentially unaffected even by a matching requirement linked to excess cost. Federal aid would merely relieve these grantees of a fiscal burden they would otherwise have borne voluntarily, freeing up some nonfederal funds for general use. Second, suppose that some grantees value supplemental services for the disadvantaged enough to pay for some themselves, but not as much as the federal government wants. Such grantees should be motivated to accept the federal matching grants and to increase their total outlays for supplemental services by at least part of the amount of federal aid. The reason is that these grantees can satisfy the matching requirement, wholly or in part, with funds they would have spent on supplemental services anyway, thereby earning federal aid dollars at no extra cost to themselves. Third, consider grantees that are not averse to providing supplemental services for the disadvantaged but do not value them enough to pay for any themselves. Some of these grantees may be persuaded by the offer of federal cost-sharing to provide some or all of the supplemental services the government wants and to pay the nonfederal portion of the cost. For such grantees, the "discount" implicit in matching aid tips the balance; services that seem unattractive at full price become attractive when the price is reduced by federal cost-sharing. Finally, consider grantees that are so disinterested in, or opposed to, supplemental services for special-need students that they are unwilling to pay even the nonfederal share of the cost. If permitted, these grantees would decline to provide matching funds and would reject, or "turn back," their entitlements of earmarked federal aid (see the later discussion of "opting out"). Assuming that eligible recipients exhibit the full range of preferences described above, all four types of outcomes are likely to be observed.

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[69] For the purpose of this conceptual discussion it is implicitly assumed that the matching requirement applies at the level of the individual grantee. That the Perkins Act actually leaves it up to each state to decide whether to pass the requirement through to grantees is an important complicating factor, which is discussed separately below.

In sum, a theoretical analysis suggests that (a) tying matching to excess costs is the crucial feature of the Perkins matching requirement, but (b) even with this linkage, the effect of matching is likely to vary greatly, depending on each grantee's propensity to support supplemental services for handicapped and disadvantaged students. If matching were not tied to excess costs--i.e., if grantees could claim all their outlays for the handicapped and disadvantaged, not just their excess outlays, as matching contributions--the matching requirement would be meaningless. Most grantees would "overmatch" federal aid automatically; compliance with matching would degenerate into an accounting exercise; and there would be little if any stimulative effect on outlays for the target students.[70] Linking the matching requirement to excess costs does not guarantee that matching will generate additional services for the target groups. Grantees may still be able to satisfy all or part of the requirement with funds that would have been spent anyway. But without the connection to excess costs, there would be little reason to have a matching requirement in the law.

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[70] This argument may be somewhat overdrawn in that it remains possible, even today, that some LEAs, left to their own devices, would systematically exclude disadvantaged students from vocational programs and thereby incur very little total cost, not to mention excess cost, for vocational education of the disadvantaged. Conceivably, such LEAs might spend, in total, less than the amounts required to match federal vocational education aid for the disadvantaged. If so, the matching requirement might affect spending even if it were not tied to excess cost.

ASSESSMENT OF THE SPECIFIC MATCHING PROVISIONS IN PERKINS

Although the foregoing abstract discussion applies in broad outline to the actual Perkins matching provisions, it misses some important aspects of reality. Among the matters requiring further examination are (1) implications of specific features of the Perkins requirement--namely, that it is statewide, applies in the aggregate, and can be satisfied in part with in-kind contributions, (2) interactions between the matching requirement and certain other Perkins provisions, (3) differential effects of matching on outlays for the handicapped and disadvantaged, stemming from differences in the circumstances of the two groups, and (4) the connection between the matching requirement and grantees' rights to "opt out," wholly or in part, of accepting federal aid and serving handicapped and disadvantaged students under the Act.

Statewide Matching

That the matching requirement applies to whole states rather than to individual LEAs or institutions changes its character significantly but in a manner that depends on how each state chooses to satisfy its statewide obligation. States basically have three options, usable separately or in combination. A state can match federal funds directly with state funds; it can seek to fulfill the requirement by identifying outlays of LEAs and postsecondary institutions throughout the state that qualify as matching contributions; and it can pass the matching requirement through to the individual grantees. These may be termed the direct matching, match-gathering, and match-delegating strategies, respectively.

Direct state matching is the policy most likely to produce the fiscal outcome apparently desired by Congress--namely, that Perkins grants for the handicapped and disadvantaged should generate supplemental services for such students valued at a multiple of the amount of federal aid itself. Information is not available on how many states match Perkins funds directly at the state level, but at least a few states apparently fall into this category. The specific effects of direct matching would depend on precisely how a state distributes matching funds and controls their uses. The most straightforward distributional method is to allocate state matching funds in proportion to federal funds (i.e., according to the statutory federal formula), but alternative methods can be used. For instance, a state can distribute matching funds on an equalizing basis (in an inverse relationship to ability to pay) and by so doing reach a more equitable outcome than by adhering to the federal formula. As to uses of funds, a state may add nothing to the federal rules, in which event grantees would have considerable opportunity to substitute state matching funds, along with federal aid, for local funds that might otherwise have been spent on target-group students; or, a state might limit opportunities to supplant by stipulating the types of projects and activities for which federal and state aid may be expended. The latter policy would reduce opportunities for supplanting and enhance the additivity of the federal matching grants.

In contrast to direct state matching, the strategy characterized as "match-gathering" is the least likely to generate net increases in the resources devoted to handicapped and disadvantaged vocational students. It entails identifying as much ongoing state and local spending as possible (i.e., outlays that would have been made regardless of Perkins grants) that can qualify as matching contributions under the Perkins rules. The more such outlays can be identified, the less "new" money the state needs to come up with to satisfy the Perkins requirements. In particular, the match-gathering approach is likely to involve a search for grantees that "overmatch" their own Perkins grants, so that their surplus matching funds can be used to compensate for shortfalls elsewhere.[71]

Because of the wide latitude allowed states and grantees under the Act to define supplemental services and excess costs, it would be unusual for a state not to be able to fulfill much or all of the matching requirement by identifying existing local outlays. As one OVAE official noted, it would not take very clever bookkeepers to find much of the needed matching money in activities school systems normally support--and would support with or without a federal program. That the Perkins matching requirement applies to spending for the handicapped or disadvantaged in the aggregate and not to spending for particular services or activities eases the search for qualifying local outlays. States should have little difficulty, for instance, in identifying matching funds for the handicapped among the large excess costs incurred pursuant to P.L. 94-142 and state special-education laws. Many states should also be able to find outlays that can be labeled matching funds for the disadvantaged. For example, because costs of remedial instruction in basic skills may be counted as excess costs under Perkins, local outlays for remedial services for academically disadvantaged vocational students should qualify as matching contributions. Nevertheless, states may have to supplement match-gathering with one of the other strategies. Unfortunately, there is no information on the extent to which states actually practice match-gathering, or, more specifically, on how many states take advantage of local "overmatching" to fulfill their statewide requirements.

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[71] One OVAE official pointed out that a strategy of pooling local outlays identifiable as matching funds, though advantageous to the state as a whole, is likely to be resisted by districts that "overmatch." The reason is that activities funded with matching funds are subject to many of the same substantive and administrative requirements as activities financed with federal aid. Therefore, individual LEAs, interested in minimizing their administrative burdens and potential audit problems, are motivated to acknowledge no more matching contributions than needed to satisfy their own obligations under the Act.

The third option, match-delegating, or passing the matching requirement through to local grantees, is the one emphasized in the preceding theoretical discussion of matching requirements. It is the only strategy that confronts LEAs and postsecondary institutions directly with the incentive effects of matching. It is also, according to OVAE staff, the strategy used by most states. No data are available, however, on how many states pass through the matching requirement or on whether the passed-through requirements are imposed at uniform or variable rates.

As already explained, many LEAs and postsecondary institutions should be able to satisfy parts of the passed-through requirement with funds that would have been expended for the handicapped and disadvantaged even in the absence of the Perkins Act. The stimulative effect of matching is likely to be diluted, in this respect, in much the same way as under the match-gathering approach. The difference is that the pass-through option makes it difficult for states to take full advantage of "overmatching" by individual grantees. Therefore, more "new money" for supplemental services is likely to be generated under the pass-through option than under the match-gathering option, but not as much as when the state matches federal aid directly.

The pass-through option raises serious questions about equity in the provision and financing of services for special-need pupils. A straight pass-through would confront all grantees with the same 50-50 matching rate, regardless of their fiscal capacities or concentrations of special-need students. Other things being equal, the burden of the matching requirement would be positively related to needs for services and inversely related to ability to pay. Districts with the severest needs would probably be the most likely to decline federal aid on grounds of inability to generate matching funds; high-need districts that accept aid would have to make disproportionate sacrifices to come up with matching contributions. It is difficult to believe that this comports with the Congressional directive that matching contributions should be provided equitably from state and local sources.

Matching of Spending in the Aggregate

That the Perkins matching requirement applies in the aggregate rather than to specific projects, services, or activities significantly reduces its effectiveness in generating "new" resources for the target groups. The reason is that grantees, under the "aggregate" interpretation, can cast their nets widely in the search for matching dollars. They can claim as matching contributions excess costs that have nothing to do with Perkins-aided activities or students and that would have been incurred even in the absence of federal aid. For example, an LEA that uses its Perkins funds for the handicapped to hire aides for handicapped students in a particular high school can claim as its matching contribution outlays for counseling other handicapped students in other high schools; and similarly, a community college that spends its grant funds to buy equipment for training disadvantaged students in a particular occupation can "match" those outlays with expenditures for assessing the needs of disadvantaged enrollees in unrelated occupational fields. Every dollar of matching money so claimed reduces by one dollar the grantee's obligation to make "real" (i.e., additional) contributions of its own funds to federally aided activities. In comparison, a rule defining legitimate matching funds more narrowly, as nonfederal contributions to the excess costs of specific federally aided activities serving specific sets of students, might compel grantees to channel more of their own funds into serving the target groups.

How much of a difference tightening the rule would make in practice is uncertain, however, because it depends on how adroitly grantees can respond. A grantee's natural reaction, if told that henceforth it can claim matching credit only for spending on participants in specific federally aided programs, presumably would be to affix the "federally aided" label to a broader range of its activities. Suppose, for example, that an LEA operates six occupationally specific vocational programs but claims initially that it allocates all Perkins funds for the handicapped to only one of them. Under the present rules, any nonfederally financed excess costs incurred for handicapped students in all six programs are claimable as matching funds. If the rule were changed as suggested, the LEA could protect itself by calling all six programs "federally aided" (i.e., by spreading Perkins funds thinly over all programs with handicapped enrollees). It would still be able, then, to claim the same matching contributions as before. It appears, therefore, that restricting the definition of matching contributions to outlays for federally aided programs would be meaningful only if "federally aided" were itself more precisely defined. For instance, some threshold level of funding might have to be stipulated, or a concentration requirement might have to be satisfied, for a program to count as one supported with Perkins aid.

It should be noted, lest such approaches be dismissed as excessively burdensome, that limiting the definition of matching contributions as suggested above does not imply that *separate* matching would be required of federal allocations to each individual program. Matching could still be aggregative at the grantee level, but the relevant aggregate would be more narrowly defined. Instead of consisting, as at present, of all activities that enroll handicapped or disadvantaged vocational students, it would include only the subset of those activities aided with federal funds.

Matching in Kind

Allowing grantees to match federal aid for the disadvantaged with in-kind contributions is another provision that tends to dilute the potential stimulative effect of matching, but the degree of dilution depends on what is provided in-kind. Some so-called in-kind contributions, such as imputed overhead and facilities costs, are costs that would probably have been incurred with or without Perkins aid; therefore, counting them as matching contributions reduces grantees' obligations to provide additional supplemental resources. Other in-kind contributions may be of real value to disadvantaged students, but counting them as matching is problematic because of the way they are likely to be valued. Donated equipment, for example, is as real a resource as equipment purchased with current funds; so is equipment inherited from other programs. In this respect, counting donated or inherited equipment as a matching contribution seems justified. However, claiming the full value of such equipment as part of the local match, which is what grantees are likely to do, would greatly exaggerate the contribution's size. From an economic standpoint, no more than the annual value of the equipment's services (as determined, e.g., from an amortization schedule) should be counted toward a single year's matching contribution (see the discussion of resource pricing in the previous chapter). Because of questions about the conceptual validity of some in-kind contributions and the proper valuation of others, the question of whether such contributions should be counted at all--and if so, how--seems to merit rethinking.

According to current law, in-kind matching is supposedly allowed only if a grantee otherwise "cannot" match federal aid, but this is virtually a meaningless condition. Even a grantee in dire fiscal straits can come up with money for one program by cutting support for another. Except in extraordinary circumstances, there is no operational distinction between being unable and being unwilling to make the match. Moreover, that grantees are expected to certify their own inability to match "in cash" suggests a certain lack of seriousness. If the intent is to limit in-kind matching to special situations (fiscal emergencies), the provision needs to be revised.

Implications of Other Perkins Rules

The fiscal and allocative effects of matching depend not only on the matching provisions themselves but also on related Perkins requirements. In particular, because matching is tied to the excess costs incurred for handicapped and disadvantaged vocational students, both the rules for measuring excess costs and the target group definitions interact with the requirement to match federal funds.

As explained in the preceding chapter, the supplemental services and excess cost rules contain loopholes that allow grantees to claim more excess costs than would be identified from rigorous cost analyses of services provided to target-group and regular students. The factors that facilitate inflated claims include loose guidelines for cost measurement and ambiguities about which resources are "supplemental," especially in mainstreamed settings. The same factors affect matching as well. For example, just as an LEA can claim the whole cost, rather than only the extra cost, of special equipment for the handicapped as an excess cost payable with federal aid, so it can claim the whole cost of special equipment purchased with local funds (or donated) as a matching contribution. Obviously, whenever a grantee can claim matching contributions that are not truly excess costs of supplemental resources, its obligation to make real matching contributions is correspondingly reduced.

The relationship between the matching requirement and the target-group definitions is reciprocal: on one hand, the requirement to match creates an incentive to expand the target groups; on the other, the elasticity of the target-group definitions (especially the definition of disadvantaged) helps grantees find the needed matching contributions. The latter effect is of particular interest here. The reason that expanding the target groups eases the matching requirement is that some excess costs are likely to be incurred, in the normal course of business, in serving many of an LEA's or an institution's handicapped and disadvantaged enrollees. In the case of the handicapped, this is almost a truism, as any LEA in compliance with the federal Handicapped Act must be incurring some excess cost for each handicapped individual. Therefore, the more handicapped vocational students a grantee can identify, the greater the claimable matching contributions. Although the same cannot be said as confidently about disadvantaged vocational students, selective expansion of the disadvantaged category does offer similar rewards. In particular, each disadvantaged student receiving remedial instruction (countable as a supplemental service under Perkins) carries with him or her an additional bit of spending claimable as a matching contribution. Therefore, the elasticity of the target-group definitions, already implicated as a cause of multiple resource allocation problems under Perkins, also detracts from the potential stimulative effects of the matching requirement.

Disparate Effects of Matching on Services for the Handicapped and Services for the Disadvantaged

Although the Perkins Act attaches identical matching requirements to aid for the handicapped and aid for the disadvantaged, the requirements are likely to have dissimilar effects on services for the two groups. The differences stem from disparate state-local propensities and legal obligations to serve handicapped and disadvantaged students. In many communities, serving the handicapped is relatively popular, whereas serving the disadvantaged is not (the handicapped are from all strata of society, whereas the disadvantaged are mainly from the lower classes and minority groups). Public interest groups representing the handicapped are generally stronger than organizations representing the disadvantaged and have been more effective in eliciting public financial support. Most important, the handicapped have much stronger legal claims than the disadvantaged, independent of the Perkins Act, to supplemental services and funds. These differences imply that it should be easier to satisfy the matching requirements for the handicapped than for the disadvantaged with state-local outlays that would have been made anyway, and, consequently, that matching requirements have more potential to generate "new" support for disadvantaged than for handicapped students.

Consider the differences in what LEAs need to do to satisfy the Perkins matching requirements for the handicapped and for the disadvantaged. Under the federal Education for the Handicapped Act and similar state laws, LEAs must incur substantial excess costs for their handicapped pupils. These excess costs are about as large, on average, as the total costs of educating regular pupils, or on the order of $3,000 to $4,000 per FTE pupil (Moore et al., 1988). This is greater, probably by an order of magnitude, than either the amount of federal aid or the amount of required matching money per FTE handicapped vocational pupil under Perkins. Moreover, these large excess costs, though stimulated mainly by federal law, are paid for largely with state and local--not federal--funds. Most LEAs, therefore, probably spend much more on handicapped vocational students under other laws than they are asked to spend under Perkins. Consequently, compliance with the Perkins matching requirement for the handicapped may be painless. LEAs and states need only label some of what they were obliged to spend anyway as their matching contributions under Perkins. Of course, such matching generates no additional services for the target group.

In contrast, LEAs face few of the same legal or other pressures to incur excess costs for the disadvantaged, and there is little reason to assume that they voluntarily incur substantial excess costs on their own. Left to their own devices, some LEAs would probably spend less of their own money on supplemental services for the disadvantaged than the amounts needed to satisfy the Perkins matching requirement. Their options when faced with that requirement, therefore, are to come up with extra nonfederal funds for the disadvantaged or to forego some or all of their allotted federal aid. To the extent that they choose the former, the matching requirement generates state and local support that otherwise would not have been forthcoming. Thus, the Perkins matching provisions probably mean more to disadvantaged than to handicapped vocational students.

Note that the foregoing argument pertains mainly to secondary schools. Postsecondary institutions generally do not share the obligations of LEAs to incur excess costs for the handicapped, and it less likely that they could satisfy the Perkins matching requirement for the handicapped as a mere by-product of compliance with other laws. Instead, postsecondary matching may require infusions of additional funds for both handicapped and disadvantaged students. In this sense, matching is likely to be a more potent requirement, as well as one with more similar effects on the two target groups, at the postsecondary than at the secondary level.

The Option to Decline Federal Aid

A final determinant of the effects of matching is the option given to grantees to refuse all or part of their federal grants for handicapped or disadvantaged students and, by so doing, to avoid or reduce the obligation to provide matching funds. The legality of such "opting out" was affirmed explicitly by ED in remarks accompanying the Perkins regulations (50 FR 33302). However, the relevance of opting out to avoid the obligation to match depends on state decisions--i.e., it is a relevant phenomenon only where the state passes the matching requirement through, wholly or in part, to individual grantees.[72] According to OVAE officials interviewed for this study, concerns that some grantees will turn back funds and decline to incur excess costs may be well-founded, at least with respect to the disadvantaged. Although opinion is mixed, at least some of these officials seem to think that the volume of turnbacks from the initial years of Perkins implementation will be a significant, albeit small, percentage of earmarked aid.[73] The same concern is also expressed by Hoachlander, Choy, and Lareau (1985), who even suggest that the requirement to match excess costs could defeat the objective of generating increased services for the disadvantaged. On the other hand, it may be that rejecting federal aid for lack of matching funds is mainly a transient phenomenon, reflecting grantees' initial uncertainties about how to redeploy (relabel?) funds to suit the Perkins excess cost and matching requirements.

Even if significant numbers of grantees do turn back funds for the disadvantaged, it is not clear what inference this supports about the design of the present matching requirement. Similar concerns about turnbacks following enactment of the 1976 Education Amendments led to a move in 1979 to relax the requirement by allowing, in cases of "financial inability," for federal financing of more than 50 percent of excess costs (Brustein, 1981; NIE Vocational Education Study, 1981). Going further, Hoachlander, Choy, and Lareau (1985) seem to see in the threat of turnbacks reason to eliminate the matching requirement entirely. However, there is also an alternative approach to consider--making it more difficult and costly to opt out. This could easily be done by making participation in the programs for handicapped and disadvantaged students a condition for receiving *all* Perkins aid, not just the aid earmarked for those groups.

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[72] There is clearly no option to opt out at the state level--that is, a state *must* set aside the federally stipulated percentages of its Perkins grant for services to handicapped and disadvantaged students. How a state would contrive to provide such services if substantial numbers of local grantees opted out is a problem that apparently has not had to be faced.

[73] There is a considerable lag in determining the actual turnback percentages because grantees are allowed as long as 27 months to spend the Perkins funds allotted to them in each year.

SUMMARY: FINDINGS AND POLICY OPTIONS

Whatever potential the 50-50 matching requirement has for generating additional resources for the handicapped and disadvantaged derives from its linkage to excess costs. Without that connection, matching would be an inconsequential paper requirement. With it, there is at least the theoretical possibility that requiring matching could, in some circumstances, add significantly to services for the designated target groups. The likelihood that such contributions will actually be forthcoming is diminished, however, by certain features of the present requirement--some statutory, others stemming from OVAE/ED interpretations--that undercut its effectiveness as a resource-generating mechanism. That only statewide matching is required rather than matching by individual grantees makes it easier to comply without adding to nonfederal support for the target students. That states may "pass through" the matching obligation to grantees raises serious equity concerns. The interpretation that matching applies only in the aggregate rather than to particular programs or services reduces grantees' obligations to contribute to the costs of federally financed supplemental services. The rule allowing "in-kind" matching of federal aid for the disadvantaged gives grantees additional leeway to claim as matching contributions expenses that would have been incurred even in the absence of Perkins grants. Both the elasticity of the target-group definitions and the looseness of the rules for measuring excess costs also help grantees to exaggerate their matching contributions. Although it is impossible to quantify the net fiscal effects of matching, they are probably (a) relatively small and (b) considerably smaller than what would be obtainable were it not for the design problems mentioned above.

If Congress is disinclined to make the matching requirement more rigorous and fairer, it should consider abolishing it altogether, because the existing requirement generates a good amount of pointless paperwork and imposes inequitable burdens on certain grantees. Eliminating matching might reduce the supplemental services available to special-need students in some LEAs and postsecondary institutions, but the aggregate effect would probably not be very large. If, on the other hand, Congress should decide to try to make the matching requirement more effective, there are two alternative strategies to pursue: one is to require direct matching by states; the other is to require matching by individual grantees. In conjunction with either, there are options to modify some of the specific shortcomings of the present requirement referred to above.

Under the direct-state-matching option, each state would be required to appropriate state funds to match the Perkins funds set aside for the handicapped and disadvantaged, and the combined federal funds and state matching funds would have to be distributed to eligible recipients according to the federally prescribed fund allocation methods and targeted and used according to the applicable federal rules. Thus some states, at least, would have to provide new funds for special-need vocational students.

Under the local-matching option, each LEA and postsecondary institution would be required to match federal aid with nonfederal financial contributions to the federally aided activities. This would enhance the effectiveness of matching as a device for leveraging federal aid, but at the same time it might be deemed objectionable on equity grounds--i.e., the obligation to match would be imposed on rich and poor grantees alike. The latter problem might be addressable, however, by giving states the option of either providing the matching funds themselves or adopting fiscally equalized variable-matching plans of the type now used by some states to distribute general-purpose aid to LEAs.

The more technical options, such as requiring matching of specific federally funded activities, eliminating in-kind matching or limiting its scope, and defining more precisely how matching contributions are to be valued could also help to make the matching requirement more effective. These improvements would be significant, however, only if combined with one or the other of the aforementioned broader changes in the basic matching rule.

6. THE SUPPLEMENT, NOT SUPPLANT REQUIREMENT

The prohibition against supplanting is virtually a phantom requirement in the Perkins Act. It is written in the law, and has been since 1963, but its substance is elusive. In all these years, it has not been defined, elaborated, or made operational in regulations or program guidelines. Senior officials of OVAE have made no secret of their lack of enthusiasm for the supplement, not supplant rule, even arguing that nonsupplanting is an inappropriate concept in vocational education. Not surprisingly, then, they have neither interpreted nor enforced it rigorously. In effect, the rule has been relegated to a kind of limbo of "nonprovisions" with only marginal effects on vocational education practices and programs.

Why devote a chapter to a requirement that has essentially been shunted aside? The answer lies in its potential rather than its present importance. Interpreted forcefully, as nonsupplanting provisions have been interpreted in the federal compensatory education program, the Perkins nonsupplanting rule could become a potent instrument for ensuring that Perkins grants translate into extra resources for the designated programs and beneficiaries. With respect to aid for the handicapped and disadvantaged in particular, a strong nonsupplanting rule could compensate for some of the previously discussed limitations of the supplemental services, excess cost, and matching requirements. It could reduce the now-ample opportunities for substituting Perkins funds for state and local funds, thereby enhancing the additivity of federal aid. A well-formulated nonsupplanting rule would also help to clarify the relationships between the Perkins grant programs and other federal programs aimed at the same clientele, including compensatory education programs under ECIA Chapter 1 and programs for the handicapped under P.L. 94-142.

Since the nonsupplanting rule is of interest primarily for what it could mean rather than what it means today, this chapter is different in character from the preceding ones. Instead of focusing on the existing requirement, it deals mainly with alternative nonsupplanting requirements and their consequences for handicapped and disadvantaged vocational students. It also draws heavily on concepts and practices developed outside vocational education, particularly under ESEA Title I and ECIA Chapter 1, for models of how nonsupplanting rules might be formulated under Perkins.

DESCRIPTION AND BACKGROUND

The Perkins Act contains essentially the same "supplement, not supplant" phraseology as long ago became standard in many major federal education grant programs--namely, it requires each state to include in its state vocational education plan the assurance

> that Federal funds made available under the Act will be used to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan, and in no case to supplant those State or local funds (P.L. 98-524, Sec. 113(b)(16)).

Nearly identical wording has appeared in federal vocational education legislation since the Vocational Education Act of 1963.ions (but very differently interpreted, as will be seen) have been included in the federal compensatory education program since the enactment of ESEA Title I in 1965, and such a provision appears today in ECIA Chapter 1. Other nonsupplanting requirements appear in the Education for All Handicapped Children Act (P.L. 94-142) and in ECIA Chapter 2.

Today, as in the past, the ED regulations pertaining to nonsupplanting merely repeat the statutory language verbatim (34 CFR, Sec. 401.19(a)(16)), without explaining either the types of behavior that constitute supplanting or the specific categories of funds to which the rule applies. In particular, it has never been made clear whether or how the statutory nonsupplanting language, which pertains to all Perkins grants without distinction, is to be applied specifically to aid for the handicapped and disadvantaged. Are Perkins funds earmarked for the handicapped or disadvantaged supposed to supplement and not supplant nonfederal funds that would otherwise have been spent on handicapped or disadvantaged vocational students? This is obviously a key question in determining what nonsupplanting means, or might mean, for special-need students.

INTERPRETATIONS OF SUPPLANTING: THE RANGE OF OPTIONS

Before turning to the specifics of OVAE's interpretation and alternative interpretations of the nonsupplanting rule, consider what an interpretation must encompass. Any definition or interpretation of nonsupplanting must do two things: first, stipulate what supplanting means operationally--i.e., what kinds of fiscal behaviors or outcomes indicate supplanting of nonfederal with federal funds--and, second, define the categories of funds, activities, or programs to which the nonsupplanting rule applies. The options under both headings are laid out below.

Operational Definitions and Tests of Supplanting

Special care must be taken in defining supplement, not supplant operationally because the statutory requirement itself is not expressed in operational form. The behavior that the statute seeks to bar is substituting federal vocational education aid for nonfederal money that *would have been* expended on vocational education (or on particular kinds of vocational education) in the absence of the federal funds. The problem with this formulation is that, taken literally, it calls for a comparison between actual expenditures and hypothetical amounts that "would have been" expended in the absence of federal aid. The latter, of course, are not observable. What states, LEAs, or postsecondary institutions "would" spend in the absence of federal aid can only be inferred, and any such inference necessarily rests on assumptions about how grantees behave. Any operational test of supplanting, therefore, entails a comparison between a grantee's actual expenditures and the inferred expenditure level that would exist in the absence of federal aid under some specified behavioral assumptions.

An important implication is that one is unlikely to be able to demonstrate conclusively with expenditure data alone that supplanting--displacement of state or local funds that *would* have been available--has taken place. The operational criteria and tests of supplanting that have been developed over the years, particularly under ESEA Title I, generally yield prima facie evidence of supplanting. The validity of such tests in particular situations is subject to challenge and possible refutation. This complicates implementation and enforcement of the nonsupplanting requirement but by no means renders it infeasible, as will be seen below.

Four such operational definitions, each expressible in the form of a test, have been developed for identifying situations in which supplanting has presumably occurred. All were laid out in detail in the ESEA Title I regulations adopted prior to 1981; some but not all survive under ECIA Chapter 1 today. These criteria are explained briefly here, but their applicability to vocational education for the handicapped and disadvantaged is explored more thoroughly in the subsequent discussion of alternatives to OVAE's present interpretation of the nonsupplanting rule.[74]

Test 1. Explicit or Acknowledged Supplanting. Supplanting occurs, according to this simplest of definitions, when a state or a local agency overtly substitutes federal aid for nonfederal funds. It may seem implausible that any grantee would make such behavior explicit, but experience is to the contrary. For example, Long and Silverstein (1981) cite a 1977 case in which a state adopted a scheme for distributing federal vocational education funds among postsecondary institutions that explicitly reduced a grantee's allotment of state funds by the amount of federal aid the grantee received.[75] Such behavior is likely to be rare, however, and to be exhibited only by naive recipients of federal grants, so it is unlikely to be an important or widely applicable indicator of supplanting.

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[74] This discussion of alternative tests of supplanting, as developed for the compensatory education program under ESEA Title I, is based in part on a major study of the legal framework of ESEA Title I carried out by the Lawyers' Committee for Civil Rights Under Law (1976) and on an analysis of the resource allocation provisions of ESEA Title I by Barro (1977).

Test 2. Less Support for Target-Group Students than for Regular Students. According to this definition, which applies specifically to grants for such target groups as the handicapped and disadvantaged, supplanting has presumably occurred if the students designated as beneficiaries of federal aid receive less nonfederal support than students not so designated. The underlying assumption is that in the absence of federal aid, students with special needs would have been treated at least as well as students without such needs (i.e., "regular" students). This assumption may be false, but it is a difficult one for a grantee to refute, since to challenge it is essentially to admit that the grantee would have discriminated against special-need students in the absence of federal aid. The kinds of intergroup expenditure comparisons one would make to detect supplanting are similar to those called for under the previously discussed excess cost requirement. Careful consideration must be given, therefore, to how any new supplanting tests would relate to current or alternative versions of the excess cost rules.

Test 3. Reduced Support Compared with an Earlier Period. Supplanting has probably occurred, according to this third operational definition, when state-local support for the activity in question is reduced from one year to the next. The underlying assumption, in the case of Perkins grants for handicapped and disadvantaged students, is that in the absence of federal aid, target-group students would have continued to receive at least the previously established levels of nonfederal support for vocational education services. A reduction in funding, therefore, would be taken as prima facie evidence that Perkins funds have displaced state-local funds that otherwise would have been provided. This may be characterized as a "maintenance of effort" test, but it should not be confused with the specific maintenance-of-effort provisions in the Perkins Act and the Perkins regulations, which pertain only to aggregate support for vocational education and not to support for particular categories of vocational education such as vocational education of the handicapped or disadvantaged (the Perkins maintenance of effort requirement is discussed in more detail later in this chapter).

Test 4. Using Federal Aid to Pay for Required Services. The fourth definition is that supplanting has presumably occurred when Perkins funds are used to pay for services that grantees were obliged to provide under a law (or an official policy) other than the Perkins Act.

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[75] In that instance, which involved a state's financial support for its community colleges, the state enacted a statute providing that each college would receive aid amounting to one-third of its approved operating costs *less the amount of federal funds and grants* received by that college. This statute was found by BOAE to violate the nonsupplanting provision of the Vocational Education Act (Long and Silverstein, 1981b, p. 5-45).

The assumption underlying this test is simply that in the absence of the Perkins Act other laws would be obeyed. Thus, if grantees were legally obliged by some such law or policy to provide certain services for handicapped or disadvantaged students or to incur certain (excess) costs on their behalf, the presumption is that those services would have been provided and paid for regardless of the availability of Perkins funds; hence to pay for them with Perkins money constitutes supplanting. This test is especially significant in connection with Perkins grants for the handicapped, because handicapped students (at the secondary level) are unambiguously entitled to supplemental services under other statutes. The question of how Perkins funds are supposed to relate to these other forms of supplemental support is a difficult one, to which we devote special attention below.

Categories to Which the Nonsupplanting Requirement Applies

The current statute says that federal aid must supplement, not supplant state and local funds available "for uses in the state plan" (the former statute said "uses specified in the Act") but does not make clear either at what level(s) of aggregation or to what organizational units the rule is to be applied. Among the different positions one could take on the level-of-aggregation issue are (a) that "uses" refers to all categories of vocational education activity, in the aggregate, carried on by states under their plans; (b) that it refers separately to each major purpose or program for which funds are earmarked under the Act (outlays for vocational education for the handicapped, for vocational education of the disadvantaged, for program improvement in vocational education, etc.); (c) that it refers to spending for each type of resource or service for which outlays are authorized, such as vocational instruction, vocational guidance and counseling, basic skills instruction, procurement of equipment, etc.; or conceivably (d) that it refers to spending for each occupationally specific vocational education program. As to organizational units, the ban on supplanting can be construed as applying to each state as a whole, to each LEA or postsecondary institution, or even to such subunits as schools, programs, or classes. Moreover, there is nothing mutually exclusive about these options. The nonsupplanting rule could reasonably be deemed to apply simultaneously both to states and to local grantees and both to specific categories of vocational education spending and to vocational education outlay in the aggregate.

SUPPLANTING ACCORDING TO OVAE

One cannot speak with complete confidence of an "OVAE interpretation" of supplanting because that view seems not to be expressed anywhere officially or, for that matter, in writing. In fact, refraining from issuing any explicit interpretation appears to have been one of the agency's standing policies on the nonsupplanting rule. Nevertheless, judging from interviews with five present and former OVAE (or BOAE) officials, plus some public pronouncements on the subject, there appears to be (and to have been for some time) a strong consensus among federal program administrators on what the rule does and does not mean. This is not to say that opinion has been monolithic. Some interviewees would label as "supplanting" behaviors that others would probably consider beyond the reach of the federal rules. In general, however, there is agreement, both at the doctrinal level and the level of implementation, on interpretations that severely restrict the scope of the supplement, not supplant requirement and minimize its constraining effects on the grantees.

The doctrine underlying OVAE's minimalist view of supplanting was shaped at a time when federal vocational education aid consisted mainly of general-purpose, "no strings" support of the vocational education enterprise. As spelled out by one present and one former OVAE official, its essence is this: the federal vocational education program is a federal-state "cost sharing" program, as contrasted with, say, ECIA Chapter 1, which is a "federal" program aimed at providing special, extra services of a distinctly federal design. Vocational education aid is intended primarily to relieve states and localities of some of the financial burden of supporting vocational education, not to generate new, additional, or distinct federally funded services. Requiring that federal funds supplement, not supplant state-local funds is inappropriate, therefore, because it is inconsistent with the premise that the federal role is to help defray some of the costs of state-local vocational programs. Moreover, if there is to be a nonsupplanting requirement, it should apply only to vocational education spending as a whole because it is generally up to state and local authorities to decide how vocational education resources should be distributed and deployed.

This view of the federal role seems to have endured among OVAE officials and other representatives of the vocational education community despite two developments that have made it untenable. First, a significant fraction of federal aid (now 32 percent) has been earmarked since the 1976 Amendments to pay only the excess costs of supplemental services for the handicapped and disadvantaged; so whatever validity the aforesaid doctrine has otherwise, it clearly does not apply to aid for these target groups. Second, the view that the federal role is to help defray some of the general costs of vocational education was rejected explicitly by Congress when it earmarked *all* federal aid under the Perkins Act either for particular target groups or for program improvement and rescinded the authority to "maintain" existing programs with federal funds.[76] Even if the notion of a "shared cost" program was valid in the past, therefore, it is invalid today; nevertheless, it continues to color, if not dominate, the outlook of those charged with interpreting and enforcing the Perkins targeting provisions.

More concretely, there are two main elements to the OVAE stance on supplanting. The first concerns the categories of funding to which the nonsupplanting rule applies. OVAE officials seem to take the position (without fully articulating it) that the rule applies only to the most global and the most microscopic categories of vocational spending but to nothing in between. At the global end of the scale, they tend to equate nonsupplanting to maintenance of effort (as one official expressed it, nonsupplanting is the general principle that is implemented by the Perkins maintenance-of-effort rule). The latter rule (P.L. 98-524, Sec. 503) bans states from reducing their own support for vocational education in the aggregate but does not prohibit reductions within specific categories of vocational education. Following suit, OVAE officials assert that the nonsupplanting rule also pertains only to statewide vocational education outlays in the aggregate and not to spending in such particular areas as vocational education for the handicapped or disadvantaged.[77] They apparently do not consider that supplanting has necessarily occurred, therefore, if a state responds to an increase in federal aid earmarked for the disadvantaged by reducing state support for the disadvantaged, provided that the overall level of state vocational education funding is maintained. Similarly, they do not see it as a supplanting violation if a particular local recipient reduces its support for vocational education of the disadvantaged because the maintenance-of-effort rule, and hence, in their view, the nonsupplanting rule, applies to the state as a whole but not to individual grantees.

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[76] It is argued elsewhere in this report that these changes are more nominal than real and that funds allotted to program improvement and to certain target groups (especially adults) under the Act are still equivalent, in practice, to general aid. Nevertheless, that the newly defined federal goals have not been fully reflected in practice does not alter the point that federal aid is no longer provided, in principle, to finance ordinary, ongoing vocational education programs.

[77] It is not clear whether or how OVAE officials have reinterpreted supplanting in light of the changes that have been made in the maintenance of effort requirement under Perkins. Formerly, the maintenance of effort requirement applied to the aggregate of all state and local support for vocational education, and it applied to each individual recipient as well as to each state as a whole. In 1984, Congress eliminated the requirement that individual recipients must maintain effort and reworded the state-level requirement in a way that OVAE now interprets as limiting its applicability only to support from "state sources." As explained later, this is almost certainly an improper interpretation as it renders the maintenance of effort requirement meaningless. The immediately pertinent point, however, is that it makes untenable the position that nonsupplanting and maintenance of effort are synonymous, since the nonsupplanting requirement unambiguously applies to substitution of federal aid for either state *or local* funds.

At the opposite end of the aggregation spectrum, OVAE officials also interprets as supplanting specific substitutions of federal funds for the nonfederal funds formerly spent on a particular expenditure object. An example is that an LEA might be cited for supplanting if it charges to Perkins funds the salary of a particular staff person (or staff position) formerly paid for with state or local funds. Most of the audit exceptions that have been filed under the heading of supplanting seem to revolve around these kinds of "microsupplanting" violations.[78] The emphasis on such "violations" misses the purpose of having a supplement, not supplant requirement. Whether particular items are "paid for" with federal or nonfederal funds is of little relevance in determining whether federal aid has supplanted nonfederal support. The economically meaningful question, whether nonfederal spending for a particular program, activity, class of recipients, or other expenditure category of interest has been reduced in response to federal aid, cannot be addressed by focusing on whether particular expenses are debited to the proper accounts.

Thus, on one hand the OVAE interpretation "globalizes" the nonsupplanting requirement and, on the other hand, trivializes it. The categories that Congress legislated about--vocational education of the handicapped, vocational education of the disadvantaged, program improvement in vocational education, etc.--are not covered. In this sense, the prevailing interpretation seems irrelevant to achieving the purpose of the law.

The second component of the OVAE stance pertains to operational tests and criteria. The agency's general approach seems to be to recognize as supplanting violations only the most clear-cut forms of substitutive behavior. Evidence of direct and/or explicit substitution of federal for nonfederal funds is what is relied on in the microsupplanting cases, which means that only grantees without minimally clever bookkeepers are likely to be cited for violations. In comparison, the other three criteria of supplanting, which depend on less obvious and less direct evidence of substitutive behavior, have been much less used. Tests based on comparisons between current-year and past-year outlays have been applied, as already explained, only to the most aggregative and the most microscopic categories of spending. The OVAE officials interviewed for this study oppose using such interyear comparisons to identify either supplanting within broad program categories or supplanting of aggregate nonfederal support by individual grantees. They argue that if Congress had wanted to impose constraints akin to maintenance of effort on individual recipients and individual programs, it would have written such requirements into the law. The intergroup-comparison test (whether target-group students receive less nonfederal money than regular students) has not been viewed within OVAE as pertinent to supplanting, possibly because such tests are considered to fall under the separate supplemental services and excess cost rules. The status of the required-by-law test is uncertain. Some of those interviewed seem only vaguely aware of it; others, though well aware of it, would construe it very restrictively. For instance, one former OVAE official asserted that the required-by-law criterion should apply only where a grantee fails to provide a specific level of funding specified in a statute. In general, OVAE officials take a narrow view of what constitutes evidence of supplanting. That, coupled with an even narrower view of the categories within which supplanting is prohibited, explains why the supplement, not supplant provision has never been made into an effective instrument for promoting the additive use of federal vocational education funds.

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[78] Based on interviews with two OVAE officials with responsibility for program audits and processing of audit exceptions.

THE NATURE OF THE SUPPLANTING PROBLEM

Before considering alternatives to the OVAE interpretation of the nonsupplanting requirement, one needs to consider how supplanting is likely to occur in connection with Perkins grants for the handicapped and disadvantaged. In what situations and through what mechanisms is federal aid likely to be substituted for nonfederal funds, and with what consequences for the intended beneficiaries? An important consideration in defining the "threat" is that some barriers to fiscal substitution already exist, independent of any nonsupplanting rule, in the forms of the Perkins supplemental services, excess cost, and matching requirements. The operative question, therefore, is what kinds of supplanting can be expected that are not handled adequately by these other Perkins provisions?

Consider, first, the prospects for supplanting in the absence of any constraints on grantees' uses of funds. The opportunity exists to use federal aid substitutively whenever such aid is earmarked for an activity to which state or local agencies also contribute significant funds of their own. Instead of adding federal funds to what would have been spent anyway, the grantee may use some or all of it to replace nonfederal support. This makes federal aid wholly or partly nonadditive: each aid dollar generates only a fraction of a dollar in additional spending for the intended purposes; the remainder is converted into general aid.

The grantees' reasons for wanting to use federal aid substitutively are straightforward: using aid additively for the federally designated purpose often means spending money on activities that are of low priority from the state or local point of view. Suppose, for example, that an LEA's priorities are such that it allocates $500,000 of its own money to vocational education of the disadvantaged and would, at the margin, allocate 10 percent of any increment in general revenue to such students. Suppose that the LEA receives a federal allotment of $100,000 earmarked for that use. If the aid were unrestricted, the LEA, by assumption, would spend only $10,000 of it on vocational education for the disadvantaged and the other $90,000 for other things, but this is supposedly not allowed by the terms of the grant. Nevertheless, the LEA can achieve its preferred outcome by spending the entire $100,000 federal grant on the disadvantaged but shifting $90,000 of its own funds away from that purpose and to other uses. The grantee has nominally used federal funds as specified, but the net effect is that the grant is only 10 percent additive; the remaining 90 percent has been transformed into general aid. From the federal perspective, of course, it is the supplanting that constitutes misallocation of resources. That federal and state-local priorities do not coincide is what has caused the supplanting to occur.

But in the case at hand, the situation is altered by the presence of the targeting provisions discussed in previous chapters. The supplemental services and excess cost rules require that all grant funds be spent only for the excess costs of supplemental services for target-group students. The 50-50 matching requirement reinforces this constraint by requiring states and localities to expend additional funds of their own on excess costs. Why then is there still a supplanting problem? There are basically two reasons. First, limiting the use of Perkins funds to providing supplemental services and paying excess costs is not logically equivalent to banning supplanting. Grantees that comply fully with those requirements are still likely to have substantial opportunities to use federal aid substitutively. Second, the supplemental services and excess cost requirements, as now interpreted and implemented, are very leaky. In a variety of ways (explained in Chapter 4), they fall far short of compelling grantees to spend all federal and matching funds exclusively on supplemental services for handicapped and disadvantaged students. The other Perkins rules, therefore, are much less of a barrier to supplanting than meets the eye.

Some examples may be helpful to demonstrate why the supplemental services, excess cost; and matching requirements are insufficient, even in principle, to ensure that grantees do not substitute federal aid for nonfederal funds. Each of the following examples describes an action that constitutes supplanting but that is allowable under the other rules (it is assumed for the purpose of this exercise that all rules are strictly interpreted and enforced--i.e., the point does not depend on ambiguities or "loopholes" in the Perkins provisions):

- A state that would have operated its own categorical aid program for disadvantaged vocational students in the absence of Perkins grants for that purpose can reduce or eliminate its funding for that program, using Perkins funds to provide the same services.

- An LEA that has a policy of providing remedial English to all disadvantaged students, whether vocational enrollees or not, could use Perkins funds to pay for the services for the vocational students, while continuing to finance with its own funds the same services for nonvocational students.

- An LEA that would have used its own funds to provide teacher aides in vocational classes with handicapped students can instead use Perkins funds for that purpose and save its own funds for other uses.

- An LEA that, in the absence of Perkins funds, would have used state and local funds to assess the needs of all its handicapped students and to develop IEPs could instead use Perkins funds to carry out the same functions for handicapped students enrolled in vocational programs.
- An LEA that would otherwise have used its own funds to reduce class size in vocational classes serving disadvantaged students could instead use Perkins disadvantaged set-aside funds to pay for the class-size reductions.
- A state that would have given special weight to the handicapped and disadvantaged in distributing state aid to LEAs or community colleges could eliminate or reduce the special weighting factor and rely on Perkins funds to fill the gap.

Note that in each of these cases, excess costs for the handicapped or disadvantaged are incurred, but the state or local contribution to financing the excess costs is reduced in response to the availability of Perkins grants. This illustrates that grantees can often comply with the supplemental services and excess cost rules, while still using federal aid to supplant state and local funds.

APPROACHES TO MAKING NONSUPPLANTING MORE EFFECTIVE

To turn the present nonfunctional supplement, not supplant requirement into a useful additivity-enhancing instrument would require major changes in both substance and implementation. The main substantive problems, as explained above, are that (1) the requirement, as interpreted by OVAE/ED, has not been applied to the pertinent expenditure categories and organizational levels, and (2) appropriate criteria and tests of supplanting have not been established. The procedural problems are that (1) no regulations, guidelines, or interpretations have been issued to inform states and grantees of their obligations under the nonsupplanting provision, and (2) enforcement has apparently been minimal, with emphasis on trivial microsupplanting violations. Redefining the substance of nonsupplanting is essential, as even vigorous enforcement of OVAE's version would do little to improve the targeting of Perkins funds. On the other hand, rethinking the substance would accomplish little if the revised definitions were not actively disseminated and enforced. The roles of enforcement and sanctions should not be overemphasized, however. Given the risk-averse behavior of the typical grantee, simply making clear that the nonsupplanting requirement is to be taken seriously and specifying what compliance entails might be enough, without numerous audits and sanctions, to direct substantial additional resources to their intended uses.

The following are some specific steps that could be taken to make the supplement, not supplant provision into an effective resource allocation tool:[79]

Applying the Nonsupplanting Provision Explicitly to Support for the Handicapped and Disadvantaged

One of the OVAE/ED interpretations that has helped to make the Perkins nonsupplanting requirement impotent is that the requirement does not apply specifically to funding for vocational education of the handicapped and disadvantaged. Given this interpretation (which, incidentally, antedates the Perkins Act), OVAE does not necessarily view substitution of federal for state-local support of target-group students as supplanting. But this interpretation is not compelled by the statutory language. To the contrary, a reasonable interpretation of the statutory reference to state and local funds for "uses specified in the State plan" (P.L. 98-524, Sec. 113(b)(16)) is that "uses" pertains to each purpose for which Perkins funds are specifically set aside in the Act, including support of vocational education for the handicapped and vocational education of the disadvantaged. OVAE might seek to justify its present position by claiming that "uses" refers to all uses combined rather than to each use individually, but that reading, whether valid or not, is discretionary and could be altered without legislative action. Alternatively, of course, Congress could clarify the issue by saying explicitly that grantees are to use federal funds so as to supplement, not supplant the nonfederal funds that would otherwise be available for *each* enumerated use of federal aid (or, even more explicitly, by saying that the Perkins grants set aside for each target group are to supplement, not supplant state-local support for vocational education of target group members).

Clarifying the Nonsupplanting Principle

Another helpful step would be to clarify what supplement, not supplant means in principle and what types of fiscal behavior it is intended to prevent. As explained earlier, there are two standards of reference against which the "supplemental," or additive, character of federal aid can be judged. One, standard, the level of support that grantees provide for nonhandicapped or nondisadvantaged students, is already built into the supplemental services and excess cost rules. The second standard, the level of support that grantees *would have* provided for the handicapped and disadvantaged were it not for the availability of federal aid, is the one embodied in the nonsupplanting rule. What needs to be clarified is that *both* standards apply to federal aid for the handicapped and disadvantaged under the Perkins Act: that is, federal aid must not only be expended solely to finance supplemental services but also must not displace whatever nonfederal funds would have been spent on such supplemental services in the absence of the Perkins grants.

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[79] Note that although this discussion deals only with the nonsupplanting requirement as it applies to Perkins grants for the handicapped and disadvantaged, similar changes would also be beneficial in connection with other Perkins grant programs. In particular, the relevance of the nonsupplanting principle in connection with Perkins program improvement grants is examined later in the report.

To appreciate the significance of the dual standards of additivity, consider this example: Suppose that an LEA spends $1,000 on vocational education services per regular vocational student and receives enough Perkins aid to provide $200 in supplemental services per disadvantaged vocational student. Assuming no matching requirement, this LEA must spend $1,200 per disadvantaged vocational student to comply with the excess cost provision. Suppose further, however, that it can be shown that in the absence of federal aid this LEA would have provided supplemental services worth $100 to each such student.[80] According to the nonsupplanting principle, the LEA would be expected to maintain its contribution, and so the total required outlay per disadvantaged vocational student would be not $1,200 but $1,300. In this instance, the nonsupplanting rule imposes a greater obligation than does the excess cost rule alone.

A complicating factor is that it is unclear how the nonsupplanting principle should interact with the Perkins matching requirement. Suppose that the LEA in the foregoing example has to match federal aid 50-50 with its own funds. To comply with both the matching and excess cost rules, it would have to match the $200 in federal aid per disadvantaged student with $200 of its own, and spending per disadvantaged vocational student would have to total $1,400. But what about the $100 that would have spent for supplemental services in the absence of federal aid? Does the LEA still have to make that contribution in addition to providing matching funds? The answer depends on whether the supplement, not supplant rule applies to federal aid only or to federal aid and matching funds combined. If the former, the required $200 matching contribution would also cover the LEA's $100 obligation under the nonsupplanting rule; if the latter, the two obligations would be additive, and the total required outlay per disadvantaged vocational student would rise to $1,500. Since the statute says only that *federal* funds must supplement, not supplant state and local funds, the former (less rigorous) interpretation seems to be valid legally; this seems to be OVAE's understanding as well.[81] If it were deemed desirable to apply the more rigorous standard--that both Perkins funds and state-local matching funds should supplement, not supplant other state-local support--the statutory language would have to be rewritten accordingly.

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[80] The pertinent evidence might consist, e.g., of information that the LEA provided supplemental services in that amount prior to receiving Perkins funds for vocational education of the disadvantaged or that it provides such supplemental services to disadvantaged students generally (e.g., remedial instruction) regardless of whether they are enrolled in vocational programs.

Applying the Nonsupplanting Rules to Multiple Levels of the State-Local System

One of the OVAE/ED interpretations that has done the most to keep the nonsupplanting rule ineffective is that the rule covers only supplanting of state-local vocational outlays in the aggregate and supplanting at the micro level but nothing in between. This diverts attention from the levels at which the additivity of federal aid is most likely to be threatened: supplanting at the individual recipient level (withdrawals of support that individual LEAs or postsecondary institutions would have provided for vocational education of the handicapped or disadvantaged) and supplanting at the state level (withdrawals of either direct state funding of services or state aid for vocational education of the target groups). Here again, OVAE/ED's restrictive view of the expenditure categories to which nonsupplanting applies is neither compelled nor suggested by the statute; in this instance, moreover, it appears inconsistent with Congress' intent that federal aid should not substitute for state or local funds.

A reasonable framework for determining both the organizational levels and the expenditure aggregates to which the nonsupplanting requirement should apply was set forth by Long and Silverstein in an analysis of the fiscal provisions of the pre-Perkins statute (1981b, pp. 5-46). The key principle is that the prohibition against supplanting should operate at each level where the danger of supplanting exists--that is, at each level where officials could take the availability of federal aid into account in determining levels of support to be provided from state and local sources. Thus, for example, the possibility that a state could reduce its own aid to localities in response to federal aid implies that supplanting should be prohibited at that level; and the possibility that an individual LEA or postsecondary institution could respond to federal aid by reducing its own support of vocational programs implies that supplanting should be barred at the individual recipient level as well.[82]

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[81] OVAE's interpretation is implicit in a comment attached to the regulations adopted under the 1976 Amendments, to the effect that the matching requirement makes it unlikely that any supplanting violation would occur in connection with federal aid for vocational education of the disadvantaged (42 FR 53877, October 3, 1977). This remark makes sense only if it is understood that funds that a grantee would have provided in the absence of federal aid can be used to satisfy the matching requirement.

Applying this principle to Perkins grants for the handicapped and disadvantaged, it would seem reasonable to say that the requirement to supplement, not supplant has been violated when any one or more of the following takes place:

- Total state-local outlay for vocational education of the handicapped or for vocational education of the disadvantaged is reduced below the levels that would have prevailed in the absence of federal aid;
- A state responds to the availability of the Perkins grants by reducing state aid for vocational education;
- A state responds to the availability of the Perkins grants by reducing state aid for education of the handicapped or state aid for education of the disadvantaged;
- A state responds to the availability of Perkins grants by reallocating state aid among LEAs or postsecondary institutions in a way that "penalizes" recipients of federal aid;
- An LEA or postsecondary institution reduces its funding for vocational education of the handicapped or the disadvantaged, below what would have been provided in the absence of the Perkins grants;
- An LEA or postsecondary institution reduces its funding for education of the handicapped or the disadvantaged generally below what would have been provided without Perkins aid.

Two aspects of the foregoing require clarification: (a) the references to state and local support of general education as well as vocational education of the handicapped and disadvantaged and (b) the references to allocations (as well as levels) of state aid. In addition, comment is called for on possible applications of the nonsupplanting principle to allocations of funds or resources below the level of the LEA or institution.

The reason that one must look beyond vocational education to see if supplanting has occurred is that Perkins funds could be substituted for state or local funds allocated to educational activities not strictly classifiable as vocational. For example, a state could reason that the availability of Perkins funds earmarked for the handicapped reduces the burdens on LEAs of financing special education services for handicapped students and, accordingly, could cut back on the state aid it would otherwise have distributed to support such special education. This constitutes supplanting, even though the type of state aid in question is not specifically earmarked for vocational education. Similarly, an LEA could decide to substitute the Perkins funds it receives under the disadvantaged set-aside for local funds that would otherwise have supported remedial instruction in basic skills. Again, the local funds in question are not for vocational education per se; yet supplanting is clearly taking place. The general point is that any fiscal response to Perkins grants that results in reduced support for the target-group students qualifies as supplanting, regardless of whether the reduction is in the vocational or nonvocational portions of their educational programs.

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[82] Long and Silverstein (1981b, p. 5-50) concluded that a nonsupplanting requirement was unnecessary at the recipient level, but they arrived at that conclusion mainly because such a requirement would have duplicated the recipient-level maintenance-of-effort requirement then in the law. The latter has since been abolished under the Perkins Act, making this argument irrelevant.

The point that supplanting may entail a redistribution of state aid is perhaps less obvious. A state could react to the availability of Perkins grants not by reducing the magnitude of its own aid but by redistributing that aid in such a way that grantees favored by the distribution of federal aid end up with less state aid than they would have received otherwise. A plausible motive for such redistribution is this: local agencies that would otherwise have seemed particularly needy to state policymakers (say, because of their heavy concentrations of low-income students), and that would have received correspondingly large allotments of state aid, begin to look less needy when they are favored by the federal fund distribution formulas. A state might conclude, therefore, that the urgency of state aid to such LEAs is reduced by the availability of federal money, and hence that some state aid that would otherwise have been provided can be diverted to other places. But from the federal point of view, such diversions constitute fiscal substitution and supplanting. If allowed, they would offset the distribution of federal aid, nullifying Congress' effort to assert certain distributional priorities. Awareness of the possibility of such redistributions of aid led, in the federal compensatory education program, to promulgation of the rule that states may not allocate state aid in a manner that "penalizes" LEAs on the basis of their receipts of federal aid.[83] The same principle seems logically applicable, in the Perkins context, to distributions of both state vocational education aid and state aid for the handicapped and disadvantaged among LEAs and postsecondary institutions.[84]

Whether the supplement, not supplant requirement should be interpreted to apply below the recipient level--that is, to particular programs, activities, or schools--needs to be debated.

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[83] The rule provided that no payments of aid under ESEA Title I would be made to a state that "has taken such payments into consideration in determining the eligibility of [an LEA] for State aid, or in determining the amount of that aid...in such a way as to penalize [the LEA] with respect to the availability of State funds" (45 CFR, Sec. 116.44, October 1, 1976).

[84] This issue is discussed again in connection with the intrastate distribution of Perkins funds in Chapter 8.

In the case of ECIA Chapter 1 (and ESEA Title I), the nonsupplanting rule definitely applies at the school-building level, but that is because Chapter 1 funds are apportioned, by law, to individual participating schools. No such apportionment takes place in vocational education (i.e., there are no specifically identified "Perkins-funded" schools), and so that rationale for a sub-LEA nonsupplanting rule is lacking. On the other hand, there is the danger that in LEAs with multiple high schools, the availability of federal vocational education funds earmarked for the disadvantaged could induce LEA officials to shift nonfederal funds from schools with large concentrations of the disadvantaged to schools with better-off students. Such reallocations would undercut the purposes of the Act. However, a building-level nonsupplanting rule would be ineffective in preventing such shifts, since nothing in the Perkins Act directs federal funds to schools where concentrations of disadvantaged are high. If the Congress is interested in channeling additional vocational education resources to such schools, it will have to do so directly (i.e., by specifying school-selection and school-level targeting procedures) in addition to extending the nonsupplanting rule.

Requiring that federal funds supplement nonfederal outlays for particular programs, services, or activities below the LEA or institution level also seems inappropriate, since the Perkins Act prescribes no allocations at those levels. That is, Perkins funds are directed to states, to local recipients, and to such major uses as vocational education of the handicapped, vocational education of the disadvantaged, and program improvement; they are not directed in particular amounts to such services as instruction or guidance nor to particular occupationally specific programs. It would not seem reasonable, therefore, to stipulate that the federal funds allocated to each such service or program must supplement, not supplant the nonfederal funds allocated to that same category.

However, this is not to deny the relevance of looking at detailed funding patterns for indicators of fiscally substitutive behavior. For instance, if an LEA says it is using Perkins funds to assess the educational needs of handicapped vocational students, and it turns out that similar assessments of other handicapped students (those not enrolled in vocational programs) are being performed at local expense, it is reasonable to suspect supplanting. That is, it appears that all handicapped students would have been assessed in any event, and Perkins funds are paying for a service that would have been provided anyway. Further investigation is called for of whether the Perkins target-group students are receiving appropriately larger outlays than their nontarget-group counterparts (see the later discussion of intergroup comparison tests). Similarly, if a community college reports spending Perkins funds this year to provide the same kind of remedial instruction that it paid for with nonfederal funds last year, supplanting may have occurred, and a full comparison of this year's and last year's outlays for the target-group students would be in order (see the remarks on interyear comparison tests, below). In sum, information on micro-level expenditure patterns cannot prove that supplanting has taken place (nothing more may be involved than changes in the inherently arbitrary labeling of particular outlays as federally or nonfederally funded), but it can point to situations where further inquiry is required.

Applying the Full Array of Supplanting Tests and Criteria

Clarifying the applicability of the nonsupplanting rule, as discussed above, would not accomplish much unless stronger criteria and tests of supplanting were also established. The three main types of tests, as explained earlier, are based on interyear and intergroup comparisons of outlays and on determinations of whether federal funds are being spent on services "required by law." The following are explanations of how the different tests and criteria of supplanting could be applied to the various expenditure categories set forth above.

Current-Year Versus Prior-Year Expenditure Comparisons. Evidence that a state, LEA, or postsecondary institution has reduced nonfederal funding of services for target-group students from one year to the next is a good, though not conclusive, indicator that supplanting has occurred. Reductions in any of the expenditure categories listed earlier are pertinent. It would be appropriate, for instance, to make interyear comparisons of levels of state vocational education aid, state aid for the handicapped and disadvantaged, local outlays for vocational education of the handicapped and disadvantaged, and local outlays for other educational services for target group members.

Several technical aspects of such comparisons need to be considered. First, interyear comparisons, to be meaningful, must be expressed in per-student terms. Changes in enrollment and demand for vocational education make comparisons of total dollar outlays virtually meaningless.[85] Second, some provision is needed for taking into account year-to-year changes in costs. If the cost of education rises by five percent from one year to the next, while per-pupil outlay remains constant, real effort has been reduced rather than maintained. Third, to avoid endless arguments about special circumstances, external factors, fiscal hardship, etc., it might be desirable to stipulate that a cutback in spending on target group members will not be deemed evidence of supplanting if it is part of a general budget reduction. If financial difficulties force an LEA to reduce its overall spending per pupil by three percent, for example, reductions of similar proportion in nonfederal support for federally aided vocational programs would not be deemed to indicate supplanting.

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[85] Note in this connection that under the Perkins maintenance of effort requirement, states and, formerly, individual recipients were allowed to demonstrate either that they maintained aggregate spending or that they maintained spending per-student. The former criterion allowed grantees to pass the maintenance-of-effort test even if they failed to increase funding in proportion to enrollment. By any educationally or economically meaningful definition, a reduction in per-student spending constitutes a failure to maintain real support for services, and it should be treated as such in a procedure aimed at identifying suspected supplanting.

It needs to be stressed that reductions in support constitute only prima facie evidence, not proof, that supplanting has occurred. Other factors that could satisfactorily explain withdrawals of nonfederal support, in addition to the general budget cutbacks cited above, include changes in the composition of demand for vocational education, changes in resource costs, and, perhaps, changes in instructional technologies and modes of service delivery. Such factors would have to be taken into account before allegations were made that supplanting had occurred. No sanctions would be appropriate on the basis of interyear funding comparisons alone.

Some additional clarification may be helpful of the relationship between the tests proposed here and the statutory maintenance-of-effort requirement. What they have in common is that both involve interyear comparisons of expenditure levels, but there are important substantive differences between the two. Under the pre-Perkins maintenance-of-effort requirement, both states and local grantees were required to maintain their contributions of funds from state and local sources. However, this requirement pertained only to aggregate spending on vocational education, not to spending on any particular target group or purpose. Thus, an aid recipient would not have been barred from shifting nonfederal funds away from the handicapped or disadvantaged and toward other vocational students. Under the Perkins maintenance-of-effort rule (P.L. 98-524, Sec. 503(a)), the requirement to maintain funding no longer applies at the local level, and under a highly questionable OVAE/ED interpretation, even the state-level requirement now applies only to fiscal effort "from state sources" (34 CFR, Sec. 401.22(a)).[86] Currently, therefore, there is no rule barring a local grantee from cutting back its own support for vocational education, or for any particular category of vocational education, in response to federal aid. The proposed interyear comparison tests of supplanting, which would apply to particular categories of both state and local spending, are very different, therefore, from both the former and, especially, the current maintenance-of-effort provisions.[87]

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[86] The OVAE/ED interpretation that the current rule requires only maintenance of effort from state sources appears to be invalid for two reasons. The first is that similar references in other laws--i.e., to the fiscal effort of a "state"--are understood to pertain to the combined fiscal effort of state and local governments. The second is that in the particular context of vocational education, a requirement to maintain effort from state sources only is pointless. Only a small fraction of combined state-local support for vocational education comes in the form of state outlays specifically labeled vocational education aid; in many states, no significant categorical aid for vocational education exists. Maintaining the particular small fraction of funding in each state that happens to derive from state sources would serve no useful purpose. In particular, it would not serve the normal purpose of a maintenance-of-effort requirement, which is to ensure that recipients of federal grants to not cut back their own support for federally aided programs.

Intergroup Comparisons of Expenditures. Two types of intergroup comparisons may yield evidence of supplanting. The first type, closely related to the excess-cost calculations described in Chapter 4, involves comparisons between nonfederally funded outlays for target-group and nontarget-group students. The second type requires comparisons between outlays for target-group students and outlays for handicapped or disadvantaged nonvocational students. Both may indicate whether federal aid is being expended on services that should have been paid for with state and local dollars.

To see how comparisons of the first type bear on supplanting, suppose that an LEA turns out to be spending $2,000 on vocational education per regular student and $2,100 per disadvantaged student and that the amount of Perkins set-aside money per disadvantaged vocational student is $200. Spending per disadvantaged student exceeds total spending per regular student by only one-half the amount of federal aid. Assuming that the disadvantaged students would have been treated no worse than the regular students in the absence of the Perkins funds, one must conclude that the other half of the federal aid has not been used to supplement state and local funds. Thus, there is a prima facie case of a supplanting violation.

Again, it must be stressed that such presumptive findings are not conclusive. For example, a possible explanation for the unequal levels of nonfederal support, other than supplanting, is that disadvantaged and nondisadvantaged have dissimilar enrollment patterns in vocational education, and the cost per student is higher, on average, in the vocational fields in which the nondisadvantaged are concentrated. Another possible explanation is that the disadvantaged students are concentrated disproportionately in schools with lower per-student costs (e.g., inner-city high schools with relatively less experience, hence relatively low paid teaching staffs). However, such explanations raise troubling questions of equity. That disadvantaged students, on average, are enrolled in lower-cost occupational training programs may serve as a defense against the supplanting charge, but does the difference in enrollment patterns itself constitute evidence of discriminatory treatment? Specifically, is the LEA in violation of the Perkins equal access requirements in Sec. 204(a) of the Act? The latter, strictly speaking, is not a supplanting issue, but it is difficult to avoid as one considers aggregative intergroup comparisons of levels of support (equal access issues are examined in Chapter 7).

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[87] From a legal standpoint also, maintenance-of-effort requirements and the proposed tests of supplanting play different roles. Under the former, aid recipients are (or were) required to maintain effort as a condition of eligibility for federal aid (unless granted a waiver for exceptional circumstances, as provided for currently under P.L. 98-524, Sec. 503(b)). Under the proposed tests, however, a failure to maintain levels of spending (within the specified expenditure categories) would constitute only presumptive evidence of supplanting, leaving states or local grantees the opportunity to show that the reductions in question were due to factors other than the availability of federal aid. In this one respect, the proposed interyear comparison test of supplanting is less stringent than the pre-Perkins maintenance-of-effort rule. In other respects, notably in that it pertains specifically to spending on handicapped and disadvantaged students rather than only to vocational education spending in the aggregate, the supplanting test is considerably more demanding than either the current or the former maintenance-of-effort requirement.

Is there any difference between the intergroup comparisons proposed here and those required to implement the Perkins excess cost rules? Clearly, the two are similar, but there is a distinction based on the different levels of aggregation at which intergroup comparisons would be made. As explained in Chapter 4, the excess cost determinations called for under the OVAE/ED interpretation of the excess cost rules are at the individual program level. Outlays for target-group students in a particular vocational program are supposed to be compared with outlays for regular students in the same program, or in a "comparable" regular vocational program. In contrast, the comparisons contemplated here are aggregative: Do the disadvantaged vocational students served by an LEA, taken as a class, receive the same funding from nonfederal sources as do nondisadvantaged students? Do the handicapped students served under the Act receive the same nonfederal support as nonhandicapped students? Negative answers to these queries indicate possible supplanting violations.

Comparisons between handicapped or disadvantaged students served in vocational programs and similarly handicapped or disadvantaged students served in academic or general programs of the same LEAs or institutions are useful for approaching the supplanting problem from a different direction. What such comparisons may show is that services being paid for with Perkins grants in the case of handicapped or disadvantaged vocational students are being financed with nonfederal funds in the case of nonvocational students. For example, if an LEA uses state or local funds to provide remedial reading instruction to disadvantaged nonvocational students but uses Perkins funds to provide similar remedial instruction to disadvantaged vocational students, it is reasonable to conclude that the latter students would also have received nonfederally financed remedial instruction were it not for the availability of federal aid, and hence that supplanting has occurred. Or, suppose that an LEA assesses the educational needs of all its handicapped students but uses nonfederal funds to pay for the assessments of nonvocational students and Perkins funds to pay for the assessments of vocational students. Again, the logical inference is that the LEA would have assessed all its handicapped students regardless of the availability of federal aid, and hence that Perkins funds have replaced nonfederal support for the assessments.

Note, once again, that such evidence is presumptive but not conclusive. It could turn out that even though particular services are charged to Perkins funds in one case and to nonfederal funds in the other, the aggregate levels of nonfederal support for handicapped and disadvantaged vocational students are more than sufficient to refute a claim of supplanting (i.e., enough supplemental services are provided to target-group students to make clear that all federal aid, plus matching funds, has translated into extra outlays for the intended beneficiaries. The intergroup comparison itself does not settle the issue but only identifies instances in which fiscal substitution appears to have occurred.

The Required-by-Law Test. The required-by-law test is important in connection with vocational education of the handicapped and disadvantaged because a number of laws and programs other than the Perkins Act either provide funds or require services for handicapped and disadvantaged students. Assuming that the grantees are law-abiding, such funds or services would be provided regardless of the availability of Perkins grants. Therefore, paying for them with Perkins funds constitutes supplanting. The principle, in other words, is that it is unacceptable to charge against Perkins grants costs that grantees are obliged to incur, or services to which the handicapped or disadvantaged are entitled, under other laws.

An issue requiring clarification is which laws (other than the Perkins Act) or which claims to services are to be considered. Some of the laws in question are federal; others are state or local. Some provide full or partial funding for required services, while others direct lower-level authorities to provide services at their own expense. Directives of the latter types are usually nonquantitative, raising the issue of what level of outlay is enough to fulfill the legal obligation. There is also the issue of how broadly one should construe the word "law" in the expression "required by law." Do only formal statutes qualify, or does the term also encompass officially adopted policies of state or local authorities?

The case to which the required-by-law test most clearly applies is that in which a state law mandates services that also qualify for Perkins funding. If a state legislature has stipulated that each student in academic difficulty is entitled to certain remedial services, then charging to Perkins grants the costs of the same remedial services for disadvantaged vocational students would be supplanting. Similarly, if a state law requires LEAs to assess the educational needs of all disadvantaged students, charging the costs of some disadvantaged students' assessments to Perkins would be supplanting. Even in these relatively clear-cut cases, however, distinctions based on the level or intensity of service can be made. An LEA could claim, for example, that the amount of remedial instruction or the thoroughness of the assessments provided to students served under the Act exceeds that provided to other students, and so the excess cost is legitimately payable with Perkins funds.

Where service mandates are nonspecific, drawing the line between what is required and what is optional (and hence potentially chargeable to federal aid) can be difficult. One former OVAE official interviewed for this study took the position that only specific, quantitative requirements should be considered in applying the required-by-law test (e.g., a requirement to provide X hours of remedial instruction or to expend Y dollars on each eligible student). To accept this view, however, would be virtually to abandon the required-by-law criterion, since service mandates are unlikely to be specified in that manner. A reasonable alternative is to draw the line empirically by comparing services provided to students served under Perkins with those served to other handicapped or disadvantaged students in or out of vocational education (this is the thrust of the second type of intergroup comparison test described above). If and to the extent that it can be shown that students eligible for Perkins-funded services receive more of the mandated types of services than other students, charging the costs of the extra services to Perkins does not involve supplanting.

The question of where lines should be drawn between law, policy, and practice is a difficult one. Many state-imposed requirements are not expressed in statutes but rather in policies adopted by state education departments or state boards of education. Insofar as such policies are binding on LEAs and educational institutions, they have the effect of law and would seem to fall within the purview of the required-by-law criterion. Under ESEA Title I, "required by law" was interpreted broadly to cover services required by state or local law or policy (Lawyers' Committee for Civil Rights Under Law, 1977). However, there is a feedback problem to consider: If state or local agencies, by adopting certain educational policies, disqualify themselves from paying for services with federal funds, they are likely to respond by not adopting formal policies in the future, and perhaps by rescinding policies adopted in the past. Especially at the local level, it is unreasonable to expect officials to limit their own ability to use federal aid by formally mandating services that would otherwise be federally fundable, and it would be absurd to say that one LEA can charge a given service to federal funds but that another cannot because the latter has made that service "required." It would seem counterproductive, therefore, to extend the required-by-law test to cover local laws or policies.

A very important question concerning the required-by-law criterion is how it applies to services required by other *federal* laws. In particular, if certain state and locally funded services for the handicapped are required under the Education of the Handicapped Act, does that mean they cannot be paid for with Perkins funds? The required-by-law test itself suggests that the answer is "yes"; that is, a grantee must provide to handicapped vocational students all the services to which they were entitled under the Handicapped Act and, in addition, all the supplemental services paid for with earmarked Perkins funds. However, this is neither reasonable nor, it appears, what Congress intended. To see why, consider the nature of the entitlement under the Handicapped Act and the pertinent language of the Perkins Act.

The Handicapped Act guarantees an appropriate education, governed by an individual education plan (IEP) to each handicapped student. If a handicapped student is enrolled in a vocation program, the IEP is supposed to prescribe all the educational services, vocational and nonvocational, appropriate for that student, and the LEA is obliged to provide and pay for those services without regard to the availability of federal funding. It makes no sense, then, to say that Perkins-funded services should supplement the services called for in the IEP--in fact, to say so is a contradiction in terms, since the IEP is supposed to cover all services appropriate to, or needed by, that student. Recognizing this, the Congress has indicated in the Perkins Act that Perkins set-aside funds for the handicapped may be used to pay the costs of serving secondary-level handicapped vocational students according to IEPs developed under the Handicapped Act, even though states or LEAs would have been required to provide and pay for those services in the absence of Perkins grants.[88] This constitutes a major exception to the nonsupplanting principle. In effect, Perkins funds for the handicapped can be added to federal aid provided under the Handicapped Act itself and used to defray the costs to states and LEAs of serving handicapped students. There is little doubt that this arrangement (a) reduces whatever additive effect Perkins funds might otherwise have had on outlays and services for handicapped vocational students and (b) "frees up" for other uses state and local funds that LEAs would otherwise have been obliged to spend on handicapped vocational students.

This de facto license to supplant in the case of students covered under the Handicapped Act is rational and for a good cause, yet one should be aware of its implications. Aid earmarked for the handicapped under Perkins is unlikely to translate into incremental services for the target-group students. Instead, the likely net effect of such aid will be either to improve services for handicapped students in general, not particularly for handicapped enrollees in vocational education, or to provide general fiscal relief to school districts. One may well ask, if that is the case, what purpose is served by earmarking federal money for handicapped secondary students under Perkins, since little if any of that money is likely to buy anything extra for the nominal target group?[89]

Finally, another unresolved aspect of the relationship between Perkins grants and other federal laws concerns the possibility that the former will supplant other forms of federal aid.

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[88] According to the statute, vocational education programs and activities for the handicapped are to be included, whenever appropriate, in IEPs developed according to the Education of the Handicapped Act (P.L. 98-524, Sec. 204(a)(3)(A)). This provision pertains, of course, only to secondary-level vocational activities for the handicapped, since there is no requirement to develop IEPs for postsecondary handicapped students.

[89] One suggested answer to this question is that the point of the handicapped set-aside in Perkins is not so much to generate outlays over and above what would otherwise been forthcoming as it is to involve vocational educators in developing and delivering vocational education services suitable for handicapped students. This goal is more likely to be accomplished, the argument goes, by putting funds earmarked for the handicapped into the hands of vocational educators than by merely specifying, as in Sec. 204(a)(3) of the Act, that the latter should participate in planning appropriate vocational programs.

For example, Perkins funds earmarked for disadvantaged vocational students may be used to fund services that would otherwise have been supported with federal compensatory education funds under ECIA Chapter 1, federal funds for LEP students provided under the Bilingual Education Act, or, at the postsecondary level, federal funds for special programs for the disadvantaged provided under the Higher Education Act. If such substitution takes place, funds from these other programs will be freed up for use elsewhere, which means, in effect, that Perkins funds will have aided students other than the intended Perkins beneficiaries. It is clear, however, that this form of supplanting is prohibited by the Perkins supplement, not supplant provision. That provision pertains only to supplanting of state and local funds; it says nothing about supplanting funds from other federal sources. A reasonable conjecture about Congressional intent in this regard is that Congress would want the Perkins target-group students to benefit from both (a) the funds specifically set aside for them under the Perkins Act and (b) their "fair shares" of federal funds available under other programs. This result is unlikely to be achieved automatically, however. A more likely outcome, in the absence of provisions for interprogram fiscal coordination, is that the Perkins set-aside funds will displace other resources that would otherwise have benefitted the same students. If Congress prefers a different outcome, it will have to fill the gap in the Perkins rules.

SUMMARY: FINDINGS AND POLICY OPTIONS

A properly implemented and enforced nonsupplanting requirement could be an effective instrument for ensuring that Perkins handicapped and disadvantaged set-aside funds translate into additional services for the intended beneficiaries. The present requirement is useless for that purpose, however, because OVAE/ED has declined to provide operational definitions and tests of supplanting or even to make clear that the rule applies to state-local support of services for handicapped and disadvantaged students. Moreover, OVAE/ED has tacitly adopted a minimalist interpretation of the requirement that severely limits its scope and prevents it from interfering significantly with grantees' abilities to use Perkins grants substitutively. OVAE/ED has the power, acting on its own, to issue regulations and guidelines that would the statutory requirement into a potent policy tool. Barring that, Congress could restate the supplement, not supplant provision in sufficient detail to make its meaning unambiguous and direct OVAE/ED to adopt appropriate implementing regulations.

Summarizing briefly, the three main things that must be done to make the nonsupplanting provision effective are (1) to require explicitly that Perkins grants for each category of special-need students must supplement, not supplant state-local support for the same category of students; (2) to make clear that the nonsupplanting rule applies to each level of the state-local fiscal system at which supplanting can occur--that is, to state outlays (including allocations of state aid to local units) and to the outlays of individual LEAs and postsecondary institutions; and (3) to introduce explicit, operational criteria and tests of supplanting. The latter would stipulate that supplanting has presumably occurred when any of the following occurs:

- A state or a local recipient of Perkins funds for vocational education of the handicapped or disadvantaged reduces nonfederal funding for handicapped or disadvantaged students;
- An LEA or postsecondary institution expends fewer nonfederal dollars per handicapped or disadvantaged vocational student than per regular vocational student;
- An LEA or postsecondary institution expends less nonfederal money per handicapped or disadvantaged student served under the Act than per comparably handicapped or disadvantaged student not so served, or not enrolled in vocational education;
- A state or grantee expends Perkins funds to provide services that handicapped and disadvantaged students are entitled to under other laws or policies.

An important point to clarify in connection with any attempt to make the nonsupplanting principle operational is how Perkins grants are supposed to relate to support for handicapped and disadvantaged students provided under other federal programs and laws: Are the Perkins funds intended to add to such support, or may they be used to "free up" the non-Perkins funds for other uses? Guidance is particularly needed on the proper relationship between Perkins grants for the handicapped and state-local support for the handicapped provided pursuant to the federal Education of the Handicapped Act. Realistically, it seems meaningless to speak of the former as being additive to what students are entitled to under the latter, but it remains important to make explicit how the two sources of support for secondary-level handicapped vocational students should be coordinated. In the cases of disadvantaged secondary vocational students, who may be eligible for services under ECIA Chapter 1, and postsecondary disadvantaged students, who may qualify for aid under certain higher education programs for the disadvantaged, a reasonable option is to stipulate that students who benefit from Perkins grants must receive their fair (i.e., proportional) shares of services under these other laws. Otherwise, one set of federal grants is likely to supplant another.

Finally, it should be recognized that even a strengthened nonsupplanting rule would still offer considerably less than 100 percent protection against substitution of Perkins grants for state-local funds that "would otherwise have been provided." It is highly likely that if federal aid had been phased out several years ago, state-local support for vocational education would be higher than it is now, but there is no way to say by what amount; nor is it realistic to think that states and localities can be induced to contribute all that they would have contributed if federal aid did not exist. As a practical matter, one cannot go much further in defining operational standards of supplanting than to adopt the measures laid out above. The option is not available of reading the minds of state and local officials to see how they actually would behave in the absence of federal funds.

7. THE SERVICE MANDATES AND EQUAL ACCESS PROVISIONS

The Perkins Act contains a set of provisions that could ultimately do more to strengthen services for handicapped and disadvantaged vocational students than all the fiscal constraints discussed in previous chapters. These are the service mandates in Secs. 204(b) and 204(c) and the equal access requirements in Section 204(a) of the statute. The potential implications of these provisions appear not yet to be widely appreciated, and the provisions themselves apparently have been only minimally and perfunctorily implemented. Interest groups representing handicapped and disadvantaged students seem not yet to have recognized that these provisions may be levers for securing substantially increased resources and services for their clients. OVAE/ED staff seem undecided as to whether Sec. 204 is a minor appendage to the law or a potential bombshell that might go off if too many injudicious questions are asked. Should the potential of Section 204 be realized, however--something that may take litigation or further Congressional action to achieve--the treatment of handicapped and, especially, disadvantaged vocational students could be transformed.

The service mandates and the equal access provisions are logically separable, but they are discussed together in this chapter because of two features that they share. One is that both seem to extend federal protections to handicapped and disadvantaged vocational students generally, not just to those said to be receiving federally funded services (although this point might be disputed by OVAE/ED--see below). The other is that these provisions, unlike the provisions discussed in previous chapters, do not deal with uses of federal funds per se but rather with the services that state and local agencies are to provide, or the standards they are to meet, in serving handicapped and disadvantaged students in vocational programs. As will be brought out below, setting service standards is an alternative targeting strategy and potentially a more effective one than the more traditional approach of focusing on how federal dollars are spent.

DESCRIPTION AND ORIGINS

Section 204 of the Perkins Act consists of three subsections. The first, Sec. 204(a) requires states to ensure that handicapped and disadvantaged students enjoy equal access to vocational programs. The second, Sec. 204(b), requires grantees to provide information about vocational offerings to handicapped and disadvantaged secondary students and their parents. The third, Sec. 204(c), specifies that certain services must be provided to each handicapped or disadvantaged student who enrolls in a vocational program. Sections 204(b) and 204(c) are the service mandates, but the discussion focuses mainly on 204(c), which is by far the more important provision.

The Service Mandate Provisions

The full text of the statutory service mandates pertaining to handicapped and disadvantaged vocational students, Secs. 204(b) and 204(c), is as follows:

> (b) Each local educational agency shall, with respect to that portion of the allotment distributed in accordance with section 203(a) for vocational education services and activities for handicapped individuals and disadvantaged individuals, provide information to handicapped and disadvantaged students and parents of such students concerning the opportunities available in vocational education at least one year before the students enter the grade level in which vocational education programs are first generally available in the State, but in no event later than the beginning of the ninth grade, together with the requirements for eligibility for enrollment in such vocational education programs.
>
> (c) Each student who enrolls in vocational education programs and to whom subsection (b) applies shall receive--
> (1) assessment of the interests, abilities, and special needs of such student with respect to completing successfully the vocational education program;
> (2) special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the needs described in clause (1);
> (3) guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of such special services; and
> (4) counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

The pertinent regulations (34 CFR, Sec. 401.101) mainly paraphrase the foregoing statutory language, offering no clarification of the scope or content of the mandate. They do stress, however, that grantees may use Perkins funds earmarked for handicapped and disadvantaged students to provide the mandated services. Specifically, the regulation pertaining to Sec. 204(b) substitutes for the statutory directive that LEAs "shall... provide information" the modified requirement that each LEA "shall use [Perkins] funds to provide information" ((34 CFR, Sec. 401.101(a)).[90] In the same vein, Sec. 401.101(b)(2) of the regulations says that

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[90] The regulatory language is somewhat peculiar in that it suggests that LEAs should use federal funds rather than state or local funds to provide the informational services in question. Clearly, if LEAs used their own funds for that purpose, more federal funds would remain to provide other services, and that would seem to be in the federal interest. Moreover, if certain LEAs already use nonfederal funds to provide the required kinds of information, shifting to federal funding would seem to constitute supplanting. Perhaps recognizing the latter problem, the Department noted in material accompanying the regulations that "if the local educational agency is already providing the required information with non-Federal resources, it need not, of course, use the Federal funds available for those purposes to duplicate those expenditures" (50 FR 33289). The phrase "need not" misses the point, however, which is that an LEA *may not* use federal funds to support a service that otherwise would have been nonfederally supported without violating the nonsupplanting rule.

> Consistent with the regulations in this part, a local educational agency may use [funds earmarked for the handicapped and disadvantaged] to pay for the cost of services and activities required by [Sec. 204(c) of the Act]).

In comments on the regulations, the Department explains that the phrase "consistent with the regulations in this part" means that LEAs may use Perkins funds to provide the mandated services only if such use complies with the matching, excess cost, and other pertinent rules (50 FR 33289).

The emphasis on using federal aid to pay for mandated services may seem unmotivated, since nothing in the Act calls that use of funds into question, provided that LEAs adhere to the other applicable rules. As will be seen, however, the question of paying for mandated services with Perkins funds bears on the crucial question of whether the service mandates are open-ended or limited by the availability of federal dollars. Viewed in this light, the regulations stake out the OVAE/ED position that the obligation created by the mandate is in fact bounded by the availability of federal funds (50 FR 33289).

The Equal Access Provisions

The Perkins equal-access rules pertaining to the handicapped and disadvantaged are spelled out in Sec. 204(a) of the Act as follows:

> The State board shall, with respect to that portion of the allotment distributed in accordance with section 203(a) for vocational education services and activities for handicapped individuals and disadvantaged individuals, provide assurances that--
> (1) equal access will be provided to handicapped and disadvantaged individuals in recruitment, enrollment, and placement activities;
> (2) equal access will be provided to handicapped and disadvantaged individuals to the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals, including occupationally specific courses of study, cooperative education, and apprenticeship programs; and
> (3)(A) vocational education programs and activities for handicapped individuals will be provided in the least restrictive environment in accordance with section 612(5)(B) of the Education of the Handicapped Act and will, whenever appropriate, be included as a component of the individualized education plan required under section 612(4) and section 614(a)(5) of such Act; and
> (B) vocational education planning for handicapped individuals will be coordinated between appropriate representatives of vocational education and special education.

The pertinent regulations appear at first sight merely to paraphrase the statutory provisions, but in fact, they modify the meaning of the statute drastically. In contrast to the statutory stipulation that states shall "provide assurances" with respect to equal access, the regulations declare that "the State, *in using basic State grant funds reserved for vocational* *education services and activities for handicapped individuals and disadvantaged individuals*" will provide the required equal access to such individuals (34 CFR, Sec. 401.19(a)(18), emphasis added). This altered language has the dual effects of (a) converting Congress's equal access rules from conditions states must meet to be eligible for federal funds to conditions states must meet in using federal funds and (b) downgrading the requirement from a general assurance that handicapped and disadvantaged students will have equal access to "the full range" of vocational programs to a much narrower, if not meaningless, guarantee of equal access to the specific activities supported with federal funds. As will be argued below, this restrictive OVAE/ED interpretation clashes with the wording and plain intent of the statute and, in effect, nullifies what might otherwise be a strong Congressional mandate for equal treatment of the handicapped and disadvantaged in vocational education.

Origins

The service mandate and equal access provisions are new under the Perkins Act and cannot be said to have evolved, as did the other resource allocation and targeting requirements, from provisions of previous federal vocational education statutes. There is little legislative history underlying Sec. 204--perhaps an unfortunate circumstance, in that it has afforded scope for administrative interpretations not necessarily consistent with what the legislative drafters intended. The relevant statutory antecedents, especially for the mandate in Sec. 204(c), appear to be more in the area of education of the handicapped than in prior vocational education law. In fact, the introduction of a new service mandate is perhaps best understood as an attempt to apply the strategy of the key federal statute governing education of the handicapped, P.L. 94-142, to the vocational field.

Section 204 originated in the Senate bill that preceded the Perkins Act (98th Congress, S. 2341); it had no counterpart in the House bill, but was eventually accepted intact by the conferees. The Senate report on S.2341 (Report 98-597, June 7, 1984) makes clear that the section was motivated by findings that special-need populations were being denied services and equal access to services under the existing Vocational Education Act. The report refers specifically to the conclusion of the NIE Vocational Education Study (1981) that "while the theme of equity pervades the law, much is authorized and relatively little required [under the 1976 Amendments]." To improve access for special-need groups, the report goes on, the Senate bill

> sets out criteria for services to the handicapped and disadvantaged to ensure that these populations will be provided with information about vocational education opportunities, access to quality programs, services designed to meet their special needs, and counseling services aimed at helping them succeed in vocational education and in the workplace (pp. 7-8).

According to one participant in the legislative process, those who drafted Sec. 204 saw themselves as laying out "standards" for services to the handicapped and disadvantaged in vocational education. They viewed this as either an alternative approach or a complementary approach to the fiscal targeting strategy reflected in the supplemental services, excess cost, matching, and nonsupplanting requirements. If service standards could be established, some believed, it might be possible to de-emphasize, or even dispense with, the cumbersome apparatus designed to direct earmarked federal dollars to federally specified activities and beneficiaries.

In formulating this alternative strategy, the Senate drafters appear to have been strongly influenced by the P.L. 94-142 precedent. Under that law, the federal government mandates that each handicapped individual is to receive "appropriate" services as specified in an individualized education plan. Significantly, the federally imposed service standards under P.L. 94-142 are divorced from the availability of federal funds. States and LEAs must provide the mandated services regardless of whether federal funds are sufficient to pay for them, and in fact, federal aid for education of the handicapped finances only a small fraction (less than 10 percent) of the excess costs of the mandated services. The federal strategy under P.L. 94-142 contrasts, in this respect, with that under the federal compensatory education program (ECIA Chapter 1), under which grantees are obliged to spend federal funds for supplementary services but not to contribute additional dollars of their own. The introduction of the Sec. 204(c) mandates into the Perkins Act can be viewed, against this background, as a tentative shift from a fund-targeting strategy modeled on ECIA Chapter 1 to a strategy founded on P.L. 94-142-type mandated service standards.

How far Congress intended to go in adapting the P.L. 94-142 strategy to vocational education is unclear. Participants in the legislative process disagree. One former Congressional staff member interviewed for this study maintained that setting up standards analogous to those under the Handicapped Act was precisely the point. The obligation to provide the services specified in Sec. 204(c) is independent, he asserted, of the availability of federal funds. But another similarly placed participant argued, to the contrary, that Congress had no intention of creating an entitlement to services for the handicapped and disadvantaged beyond what could be supported with federal aid and with required state-local matching funds. The Education Department and OVAE have embraced the latter view, though without saying so or even raising the issue explicitly. Whether the service mandate is open-ended or limited by the level of federal funding is thus a fundamental issue raised but not resolved during the development of the Perkins Act.

The equal access provisions in Sec. 204(a), though also new under Perkins, are less of a departure from prior law. They reflect the frequently articulated federal goal of equal opportunity for the handicapped and disadvantaged in vocational education and the guarantees against discrimination extended to various protected groups (including the handicapped and minorities but not explicitly the disadvantaged) under an array of federal civil rights laws. In drafting Sec. 204(a), the Senate Committee was influenced by findings that the handicapped and disadvantaged were represented in vocational education in disproportionately small numbers and were frequently relegated to lesser vocational programs. Quoting again from the Senate Report,

> ...even when monies are spent on populations with special needs, it is too often the case that these individuals are shunted into programs that are inferior in quality to those vocational programs which prepare students best for employment (p. 7).

The requirements in Secs. 204(a)(1) and 204(a)(2) that handicapped and disadvantaged students be afforded equal access in recruitment, enrollment, and placement and to the full range of vocational programs respond directly to this concern. In addition, Sec. 204(a)(3) clarifies that the handicapped carry with them into vocational programs the rights guaranteed under P.L. 94-142, specifically including the right to education "in the least restrictive environment" and subject to an individualized education plan.

Again, there is too little legislative history to establish how broadly Congress viewed these equal access guarantees. There is uncertainty about how equality of access is to be defined and even, at least in the Department's view, about whether Congress actually meant what it said when it called for equal access "to the full range of vocational programs." Any assessment of the implications of the equal access rules is necessarily contingent on one's views of these aspects of Congressional intent.

NATURE, SCOPE, AND MAGNITUDE OF THE SERVICE MANDATE

The service mandates in Sections 204(b) and 204(c) raise questions concerning the categories of students to which the mandates apply and the kinds and amounts of services that must be provided. Conditions are not favorable now for resolving these questions definitively. The mandates are relatively new; there is little legislative history; and there has been no time to develop pertinent case law. OVAE/ED has offered no guidance to grantees. Little practical experience has been accumulated in implementing the mandates at the state and local levels. The following discussion rests mainly, therefore, on the logic of the requirements themselves and on certain assumptions, spelled out below, regarding what Congress seems to have intended.

For Which Students are Services Mandated?

Determining which special-need students are entitled to the services enumerated in Sections 204(b) and 204(c) is not a straightforward matter. Though some aspects of the mandate's coverage are clear, others are not. The difficulties in specifying who is covered are similar in some respects to those encountered (and discussed earlier in this report) in establishing who is eligible to be served with Perkins handicapped and disadvantaged funds.

One aspect of the mandate's coverage that is clear is that it extends only to local educational agencies (LEAs) and not to postsecondary institutions; hence, services are mandated for secondary but not postsecondary handicapped and disadvantaged students. Why the Congress made this distinction is uncertain, but the limitation makes sense from at least one perspective. Unlike LEAs, which are generally responsible for identifying, prescribing, and providing services that are "good for" the students who fall under their jurisdictions, postsecondary institutions serve adults who enroll voluntarily for diverse purposes of their own. It seems inappropriate, therefore, for the federal government to mandate services for grown-up students who may or may not want the federally specified treatment. The coverage of Secs. 204(b) and 204(c) is parallel in this respect to that of the Education for the Handicapped Act, which mandates services and procedures for elementary and secondary but not postsecondary students. It should be noted, nevertheless, that limiting the service mandate to LEAs means that postsecondary institutions (including publicly supported ones) are not obliged to modify their offerings to meet the needs of actual or prospective handicapped or disadvantaged enrollees in vocational programs. This raises an obvious question about consistency between the general equal access goals proclaimed in the Perkins Act and the Act's more specific equal access rules. The alternative of mandating that special services should be available for postsecondary students who want them (as opposed to mandating that they be provided to all handicapped and disadvantaged postsecondary students) has apparently not been considered.

A second clear aspect of the mandate's coverage is that it is not limited to participants in federally funded activities but extends to all handicapped and disadvantaged individuals who enroll in an LEA's vocational programs. Thus, if an LEA concentrates its Perkins funds in particular occupational fields or on certain subsets of the handicapped or disadvantaged, it still must fulfill the requirements of Sec. 204(c) with respect to *all* its handicapped and disadvantaged vocational enrollees. In the case of Sec. 204(b), this breadth of coverage is inherent in the requirement to disseminate information to handicapped and disadvantaged students before they have decided whether to enroll in vocational programs or which programs to choose. In the case of Sec. 204(c), it is explicit in the statutory language that each student who qualifies as handicapped or disadvantaged and enrolls in vocational programs shall receive the specified services.

What remains unclear is who counts as handicapped, disadvantaged, or an enrollee in vocational programs for the purposes of Secs. 204(b) and 204(c). As explained in the analysis of target group definitions in Chapter 3, the official statutory and regulatory definitions of key terms, especially "disadvantaged" and "vocational student," are vague and highly elastic. Moreover, the official definitions are not in the form logically required to establish the coverage of the service mandates. The formulation in Sec. 204 is that LEAs shall provide information, under Sec. 204(b), to handicapped and disadvantaged students and their parents and then, under Sec. 204(c), provide services to students "to whom subsection (b) applies" and who enroll in vocational programs. According to the official definitions, however, a student, to be classified as handicapped or disadvantaged, must not only have a handicapping or disadvantaging condition but also must require special services or assistance to succeed in vocational education (P.L. 98-524, Sec. 521; 34 CFR, Sec. 400.4). But Section 204(b) requires LEAs to provide information to each handicapped and disadvantaged individual *prior* to any assessment of that individual's ability to perform in vocational education, which means that such definitions of handicapped and disadvantaged cannot apply. The only sensible reading of Sec. 204(b)'s coverage is that LEAs must provide the specified information to all individuals with handicapping or disadvantaging conditions. Similarly, with respect to Sec. 204(c), whether an individual "needs special services or assistance to succeed" can be decided only *after* the assessment that Sec. 204(c) requires. Again, therefore, the only interpretation that makes sense is that the service mandate in Sec. 204(c) covers every student who (a) enrolls in a vocational program and (b) has a handicapping or disadvantaging condition.[91]

In the case of handicapped vocational enrollees, the foregoing criterion makes it reasonably clear who is entitled to services under the mandate. This is because the definition of handicapping conditions under Perkins is explicitly linked to the highly detailed definitions under the Education for the Handicapped Act. In fact, the latter statute provides an operational criterion that eliminates any need to inquire freshly into the meaning of "handicapping condition" in vocational education: any student who enrolls in a vocational program and is entitled to an individualized education plan (IEP) under the Handicapped Act is also covered by the service mandates under Perkins.[92]

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[91] Of course, whether a particular handicapped or disadvantaged student requires any mandated service beyond the assessment called for in Sec. 204(c)(1) depends on the assessment results. If the results are that the student needs no special services or assistance to succeed in vocational education, there is no need to provide any of the "special services" mandated under Sec. 204(c)(2). The key point, however, is that having a handicapping or disadvantaging condition is sufficient to trigger the mandate provision for any student who enrolls in a vocational program.

In the case of the disadvantaged, however, deciding who is covered by the mandate is more difficult because the range of relevant disadvantaging conditions is defined very broadly and flexibly under the Act. Recall from the earlier analysis of target-group definitions that (a) the term "disadvantaged" includes both the economically and educationally disadvantaged; (b) both economic and educational disadvantage can be defined according to multiple criteria, among which states are free to choose; and (c) educational disadvantage is defined in terms of thresholds of academic performance that states are free to set. If states have the same flexibility in deciding who is covered by the mandate as in deciding who is eligible for Perkins-funded services, then the coverage of the mandate is vague indeed. As shown in Chapter 3, a state may define disadvantage so broadly that a substantial majority of all secondary vocational enrollees is entitled to services under Sec. 204(c) or so narrowly that only a small fraction of vocational students qualifies. Moreover, the costliness of the mandated services could itself be an important influence on state and local decisions about how disadvantaged should be defined. It appears, therefore, that although the Congress directed LEAs to serve a class of disadvantaged students, it neglected to specify who the class members are. The Department, for its part, has done nothing to clarify the matter, leaving this important aspect of the mandate's coverage up in the air.

A factor that further confuses the issue of coverage of Sec. 204(c) is that it is unclear who qualifies as an enrollee in vocational programs. As explained in Chapter 3, the statute itself offers only hints as to who should be considered a vocational student, and the Department has declined to make the definition specific, leaving that determination to the states. In consequence, a state would be free, on one hand, to classify anyone who takes even a single typing course as a vocational enrollee or, on the other, to limit the category to enrollees in organized occupational programs. Whether Congress intended to mandate the Sec. 204(c) services for a group broad enough to include the typing students is questionable, but there is no guidance on the matter to be found in either the Act or the regulations.

In sum, there is much uncertainty as to which students, and especially which disadvantaged students, have valid claims to services under Sec. 204(c). The drafters of the Perkins Act left the definitions vague; OVAE/ED could have clarified the matter by regulation or otherwise but has not done so; and now the question is left for Congress to address when it next rewrites the law. This whole issue of coverage is important, however, only to the extent that service entitlements under the law are substantial. The discussion now turns, therefore, to the nature and magnitude of the mandated services.

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[92] This criterion is explicit in the conference committee's report on the Perkins Act, which states the committee's intent "that handicapped students in secondary institutions fall under the definition of handicapped individual contained in the Education of the Handicapped Act, and therefore are enrolled in special education and have an individualized education program" (Conference Report on H. R. 4164, Congressional Record--House, October 2, 1984, H 10757).

What Types and Amounts of Services are Mandated?

The uncertainty about who is covered by the mandate pales into insignificance compared with the uncertainty about the types and amounts of services to which those covered are entitled. The key item needing clarification is the meaning of the stipulation in Sec. 204(c)(2) that each student to whom the mandate applies shall receive "special services, including adaptation of curriculum, instruction, equipment, and facilities" designed to meet the needs identified in that student's individual assessment. Were it not for this item, the mandate would call only for ancillary services--information, assessment, guidance, and counseling--of relatively limited scope and cost. The "special services" item, however, may be construed as creating an entitlement to individually prescribed, supplemental instructional services, which could easily cost LEAs several times more per handicapped or disadvantaged student than they receive in federal set-aside funds under Perkins.

The prospect that mandated special services might be costly immediately raises the even more crucial issue of whether, and in what manner, the scope of state and local fiscal obligations under the mandate is bounded. Does Sec. 204(c) establish an open-ended entitlement for the handicapped and disadvantaged akin to the requirement for "appropriate" services for the handicapped under P.L. 94-142, or is its scope limited by the amount of the Perkins funds earmarked for such students? The fiscal and resource implications of the service mandates hinge on this single question of interpretation.

OVAE and the Department have done nothing to clarify what "special services" are required, but they have formulated an unequivocal, albeit unwritten, position regarding the extent of state-local obligations. Judging from interviews with several OVAE and other Education Department officials, it seems clear that if a state or LEA were to ask, OVAE would say that Sec. 204(c) imposes no obligation on LEAs to incur costs in excess of the federal aid plus the matching funds earmarked for special-need students. In the OVAE/ED view, in other words, the law establishes no new entitlement. But this interpretation cannot be derived from the statute. The law states flatly that the specified services *shall* be provided, without making the obligation contingent in any way on the availability of federal funds. This, in all likelihood, is the reason that OVAE/ED has said very little about Sec. 204(c), not interpreting it in the regulations or elsewhere and not disseminating any information on what states and LEAs must do to comply. The OVAE position, it turns out from further inquiry, is grounded in a convoluted argument to the effect that Congress did not mean what the mandate provision in the law appears to say. This argument hinges on an obscure bit of wording at the beginning of Sec. 204(b), which states that each LEA

> shall, *with respect to* that portion of the allotment distributed in accordance with section 203(a) for vocational education services and activities for handicapped individuals and disadvantaged individuals, provide information [on vocational programs, etc.]...
> (emphasis added).

The phrase "with respect to," OVAE officials contend, indicates that Congress intended only to prescribe services that LEAs must provide with the available federal funds. According to the Department's official comment on Sec. 401.101 of the regulations,

> The phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the local agency's obligation to provide the required notice. On the other hand, it might be read to mean the recipient must use the Federal funds to provide the information. The Secretary believes that the latter interpretation is the more plausible one. The legislative history to section 204(b) of the Act indicates that while Congress intended to overcome "the lack of proper information regarding what vocational education has to offer"...handicapped and disadvantaged students, it did not intend to impose affirmative obligations upon local educational agencies apart from the use of funds under the Act (50 FR 33289).

Thus, on the basis of the words, "with respect to," the Department argued that the scope of Sec. 204(b) is limited by the availability of federal funds. Moreover, several OVAE/ED officials, when asked, asserted that the same argument applies to the more important Sec. 204(c) as well.

Whether or not one accepts the foregoing line of reasoning, the claim that it applies to the more important mandate provisions in Sec. 204(c) seems spurious. The "with respect to" phrase--whatever it means--does not appear in Sec. 204(c). That section declares without qualification that each handicapped or disadvantaged student who enrolls in vocational programs *shall receive* the specified mandated services. There is no indication that an LEA's obligation to provide the specified services depends in any way on the availability of federal funds. OVAE/ED officials insist, nevertheless, that Congress "must have meant" to impose the same limitation on Sec. 204(c) as it imposed, according to OVAE's interpretation, on Sec. 204(b). Acting accordingly, they have done nothing to require LEAs actually to provide the full set of services called for under Sec. 204(c).

Thus, there are two radically opposed views of what the mandates mean. The OVAE/ED view is that there is no service entitlement. Secs. 204(b) and 204(c) merely indicate the types of services that LEAs should provide using their handicapped and disadvantaged set-aside funds. Once those funds (plus matching funds) are exhausted, LEAs have no obligation to expend any additional funds of their own for the specified services. Handicapped and disadvantaged students have no claim to additional state or local support.

The contrary view is that the statute means what it says--that an LEA is obliged, if it receives Perkins funds for the handicapped or disadvantaged, to provide to each handicapped or disadvantaged vocational student all the services enumerated in Secs. 204(b) and 204(c). The statute, according to this view, establish an entitlement to services akin to that created by the requirement for "appropriate" services for the handicapped under P.L. 94-142. To be in compliance with Sec. 204(c), an LEA must first assess the needs of each covered student and then provide whatever instructional and other services are deemed necessary to meet those needs. Whether federal funds suffice to pay for those services is immaterial. The service obligation is free standing, independent of the availability of federal aid.

The latter position, if correct, immediately raises a related issue: can an LEA avoid the service mandate and its attendant costs by declining to accept Perkins funds for the handicapped or disadvantaged; in other words, can it "opt out" of both the programs and the mandates for special-need students? The statute is silent on the right to opt out selectively from particular Perkins programs, but the Department has put itself clearly on record. In response to questions on the regulations, it has declared, first, that

> there is no statutory requirement that all agencies eligible to receive funds for handicapped and disadvantaged persons are required to participate in Federally-supported vocational education programs for these populations,

and second, that an agency becomes subject to the service mandate provisions in 34 CFR 401.101 only when it applies for and receives funds under the handicapped or disadvantaged set-asides (50 FR 33302). This exit option provides a kind of safety valve, whereby an LEA can avoid the potentially high costs of providing mandated services (assuming that the more expansive interpretation of the mandate is correct) by foregoing the corresponding Perkins funds. One must wonder, however, why OVAE/ED has placed such emphasis on the right to opt out, given its opinion that LEAs are under no obligation to expend their own funds for federally mandated services.

As matters now stand, the correct interpretation of the service mandates can only be clarified by Congress. By publishing no interpretation and doing nothing to implement Sec. 204(c) as written, OVAE/ED has effectively put into practice its own view that the section does nothing more than prescribe certain uses of federal funds. A passive stance favors the minimalist interpretation. To implement the contrary interpretation, that Sec. 204(c) creates a new entitlement to services, would require a much more active administrative role, including promulgation of regulations and guidelines to give content to the service standards.

Assuming that Congress really did intend to create an entitlement to services, what can be said about the scope and magnitude of the obligation that the entitlement imposes on LEAs? No quantification of the service obligation or cost is possible, but by considering the elements of the mandate individually, one can judge the likely magnitude of the burden.

The Sec. 204(b) requirement to provide timely information on vocational offerings to students and their parents is inherently minor in terms of demands on resources. The Department has declined to elaborate on the kinds of information to be disseminated, leaving that to each state or LEA (50 FR 33289). It appears, however, that an LEA could comply by merely arranging a one-time mailing to the homes of handicapped and disadvantaged secondary students, containing descriptive information on the LEA's vocational education offerings and the associated requirements for admission. Thus, although the Department took special care to assure LEAs that they could pay for Sec. 204(b) activities with Perkins funds, the costs are likely to be insignificant.

Three of the four items mandated in Sec. 204(c) are ancillary services. The requirement to assess each student's interests, abilities, and special needs (Sec. 204(c)(1)) is reportedly the item that has had the most noticeable effect in practice (Millsap et al., 1989). Apparently, LEAs have responded to this part of the mandate, assessments are being provided, and a small industry has grown up to supply assessment tools (proficiency tests, interest inventories, etc.) to school systems. The cost of assessment per student is small relative to costs of vocational instruction, but apparently it can be substantial enough to absorb much or all of the Perkins allotments for handicapped or disadvantaged students. The other two mandated ancillary services are guidance, counseling, and career development (Sec. 204(c)(3)) and counseling for post-school employment and careers (Sec. 204(c)(4)). It is not clear what forms these take in practice or are supposed to take, but like the assessments they seem reasonably well-delimited and would be unlikely by themselves to impose major burdens on the LEAs.

That leaves the mandate in Sec. 204(c)(2) to provide "special services" designed to meet the needs identified in the students' assessments. This broad phrase encompasses, it appears, whatever instructional and other services might be deemed necessary to meet the educational needs of each individual enrollee. The statute specifically cites "adaptation of curriculum, instruction, equipment, and facilities" as examples of pertinent activities. If a special-need student requires more intensive instruction than a regular student to succeed in a program (e.g., extra attention or instruction in a smaller group), that presumably is covered. So too would be needs for remedial instruction in basic skills or for modified materials or equipment to compensate for a handicapping condition. One can easily read into Sec. 204(c)(2) an obligation to provide whatever is "appropriate" for the individual student's vocational instruction, just as under P.L. 94-142. The mandate under Sec. 204(c)(2), therefore, is open-ended in a way that other parts of the mandate are not. Compliance with it could be costly, and the incentive to opt out of the program could be strong. Both the prospective costs and the likelihood of nonparticipation are explored further under "implications for resource allocation and targeting," below.

SCOPE AND CONTENT OF THE EQUAL ACCESS PROVISIONS

The two main issues of interpretation concerning the equal access rules are parallel to those concerning the service mandates. One concerns coverage: for which students and within which activities is equal access required under the law? The other concerns content: how is equal access defined, and what must states and local agencies do to comply?

To Which Students and Which Activities Do the Equal Access Rules Apply?

Unlike the service mandates, which apply only to LEAs, the equal access provisions in Sec. 204(a) apply to each state as a whole and hence to all classes of grantees. Both secondary and postsecondary handicapped and disadvantaged students are entitled to equal access under the Act. This leaves two aspects of coverage to resolve: which categories of students are covered and which are the programs to which equal access must be provided?

The question of who counts as handicapped or disadvantaged for purposes of Sec. 204(a) is similar to the same question raised about the service mandates. If the highly elastic official definition of disadvantaged were applied, states would have broad discretion to limit the scope of equal access by defining "disadvantaged" narrowly. A narrow definition may not be much of a threat in this context, however, since narrowing the definition means, in the case of the disadvantaged, limiting it to those who are the worst off economically and/or academically and who are, therefore, the most likely to be denied equal access to programs.

A related question is whether an individual must "require special services or assistance" to succeed in vocational education to be considered handicapped or disadvantaged for the purposes of Sec. 204(a). That condition is supposed to work, in the context of determining eligibility to participate in federally funded activities, to ensure that federal aid is channeled to students who actually need supplemental resources and services. In the context of equal access, however, it could be used in either of two perverse ways: (1) to deny guarantees of equal access to students who have handicapping or disadvantaging conditions but are not shown to need special assistance to succeed in programs, or (2) to require equal access without regard to a student's chances of pursuing a given program successfully. Since it is unlikely that either result is intended, it seems reasonable to interpret "handicapped" and "disadvantaged," in the context of Sec. 204(a), as pertaining to individuals with handicapping or disadvantaging conditions without regard to whether they also need special assistance or services to succeed. The question of how the likelihood of success may legitimately be taken into account in placement and admission is deferred to the subsequent discussion of what "equal access" means.

In the case of Sec. 204(a), a more critical issue than which students are protected is which vocational education programs and activities are covered by the equal access rule. The Department has taken the position, as already mentioned, that the obligation to provide equal access extends only to activities supported with Perkins funds for handicapped and disadvantaged individuals. An LEA or postsecondary institution that receives Perkins funds would be free, according to this interpretation, to exclude disadvantaged students from any program or course that is funded wholly from state and local sources.[93] Such discrimination, according to the Department's understanding, would not put the grantee out of compliance with Perkins requirements and therefore would not adversely affect its eligibility for Perkins funds.

This Departmental interpretation rests on the same vague "with respect to" phrase in the equal access provision, Sec. 204(a), as was discussed above in connection with Sec. 204(b). The wording of Sec. 204(a) is that states shall provide assurances of equal access "with respect to" the state's allotment of Perkins funds for handicapped and disadvantaged individuals. The Department's argument, presented in the form of a response to a comment on the regulations, is as follows:

> Section 204(a) of the act...requires the State board to make [assurances with respect to equal access]..."with respect to" the basic State grant funds reserved for these populations. The statutory phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the application of the statutory criteria [of equal access] to the recipient's vocational education program. Or, it might be read to mean that the recipient will comply with the statutory criteria in using the Federal funds for vocational education services and activities. In light of the available legislative history to section 204(a) of the Act, the Secretary believes that the latter interpretation--that Congress intended to ensure that the States would comply with certain equal access criteria *in using the Federal funds* reserved for handicapped individuals and disadvantaged individuals--is the more plausible interpretation. The legislative history of section 204(a) of the Act does not indicate that the Congress intended to expand the application of those equal access criteria beyond the reach of funds under the Act (50 FR 33277).

In this instance, however, the Department's interpretation is almost certainly invalid, as it conflicts with the stated intent, the logic, and the explicit wording of the equal access provisions in the Act. The legislative history leaves no doubt that Congress intended to prevent discrimination against special-need students in vocational education, specifically including relegation of such students to inferior programs. As construed by the Department, however, the equal access rule permits such discrimination to continue. For instance, an LEA could allot all its Perkins funds for special-need students to low-quality vocational programs, give special-need students access only to those programs, and exclude such students from all higher-quality offerings on the basis that they are not "federally funded." This selective denial of access would be deemed acceptable under the Departmental interpretation, but it is contrary to what Congress explicitly intended.

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[93] Such discrimination against the handicapped would be impermissible no matter how the Perkins equal access rules are interpreted because of the civil rights protections extended to the handicapped under a variety of federal education and civil rights laws.

The logical problem with the Department's position is that it renders the equal access rule meaningless and useless for promoting Congress's equal access goals. What the Department's position amounts to is that as long as special-need students are not denied access to programs supported with funds specifically set aside for them under Perkins, discrimination has not occurred. However, the notion that special-need students require guarantees of equal access to the programs specifically designated for them is absurd on its face. The programs to which they do need guaranteed access are the ones to which they have not been explicitly invited. One would think it a sound principle of statutory construction that if one interpretation renders a provision meaningless, while another makes it both meaningful and consistent with Congress's stated intent, the latter should prevail; but precisely the opposite has taken place in this case.

As to the letter of the law, the equal access provision says that handicapped and disadvantaged students shall be provided equal access *to the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals* (Sec. 204(a)(2)). This plainly means that the handicapped and disadvantaged must be afforded equal access to *all* programs and may not be denied equal access to *any* vocational programs that are open to students without disadvantages or handicaps. Nothing in this statutory phraseology suggests that whether a program is federally funded is relevant. The Department's interpretation, which permits grantees to deny equal access to some vocational programs (those designated "not federally funded") is thus squarely contradicted by the explicit wording of the Act.

Perhaps the most extraordinary thing about the Department's stance is that it implies that the handicapped and disadvantaged are *not entitled to equal access even to federally funded vocational activities* other than those supported with funds specifically set aside for handicapped and disadvantaged students. For instance, an LEA would apparently have the right, under the Department's interpretation, to exclude the disadvantaged from programs financed with program improvement funds under Title II, Part B of the Act. This inference is inescapable, given the official reasoning that Congress intended to ensure only "that the States would comply with certain equal access criteria *in using the Federal funds reserved for* *handicapped individuals and disadvantaged individuals.*" That the Department's interpretation leads to so grotesque a conclusion indicates that it cannot be correct.

One can only conclude that the OVAE/ED regulation writers were reaching for a rationale for limiting the equal access rule. They convinced themselves that they found one in the sloppily drafted "with respect to" phrase of Sec. 204(a), but their interpretation is inconsistent with both the letter and the documented intent of Sec. 204(a). In effect, the Department's interpretation repeals the provision rather than interpreting it. Pending further Congressional action or a successful challenge in court, however, that interpretation remains in force. This is a point that the cognizant Congressional committees will need to consider during the upcoming reauthorization process.

What is the Meaning of Equal Access, and What Must States and Local Agencies Do to Comply?

Assuming that Sec. 204(a) does apply, as written, to the full range of vocational programs, how should equal access be defined? What criteria might be used to judge whether access is indeed equal or, more to the point, whether equal access has been denied? Lacking either Congressional or administrative guidance, one must consider various possibilities. Clarification of which meanings are intended will have to await some further action by the Department or Congress or an interpretation by the courts.

The principal specifications of Secs. 204(a)(1) and 204(a)(2) are that handicapped and disadvantaged students are to be treated equally in "recruitment, enrollment, and placement activities" and that there is to be equal access to "the full range" of vocational activities available to nonhandicapped and nondisadvantaged persons. The emphasis is on placement and admission to programs. There are at least the following means by which the handicapped or disadvantaged might be denied equal access in admission and placement: (1) overt denial of access, (2) imposition of discriminatory standards of eligibility or admission, (3) discriminatory sorting through the guidance and counseling process, and (4) locational disparities in program offerings. The implications of each are considered below.

Overt discrimination is probably the least important concern. An LEA or postsecondary institution might conceivably exclude handicapped or disadvantaged students explicitly from certain vocational programs, but such behavior is too inept to be frequently encountered. Explicit discrimination against the handicapped or against minorities (who are heavily represented among the disadvantaged) would violate various civil rights laws, which contain much stronger deterrents and sanctions than anything in the Perkins Act. The students most likely to be victims of overt discrimination are the educationally disadvantaged, but such discrimination is likely to center around eligibility or admission standards, or perhaps guidance and counseling, and it is discussed in those connections below.

The relationship between equal access and eligibility and admission standards is complex, with ramifications that extend far beyond the Perkins Act. Such standards may be, on one hand, legitimate instruments for matching students to programs or, on the other hand, tools of discrimination, whereby individuals are unfairly denied opportunities. The problem of distinguishing the former from the latter is one that arises not only in vocational education but also in connection with such things as "tracking," admission to college, and selection for employment and promotion. In the college admission and employment spheres, selection criteria have become the subjects of extensive litigation, with some important issues having been decided by the U.S. Supreme Court. While issues of admission and placement in vocational education have not risen to that level, the issues are basically similar.

Admission standards can be applied in ways that would exclude many special-need students from the more desirable vocational programs. Using academic performance (grades, test scores) as an admission criterion, by definition, screens out academically disadvantaged students. Requiring prerequisites that the disadvantaged are less likely to have taken has the same effect. Benson (1988) lists three conditions under which such practices might be construed as denial of equal access: (a) prerequisites are excessive or not demonstrably relevant to success in the program, (b) entrance requirements are imposed that are not good predictors of success, and (c) admission standards have the effect of intimidating special-need students and discouraging them from applying. Even an otherwise valid admission standard, according to Benson, can be used in a discriminatory manner. For example, a "pernicious" use of an admission test, he says, is to admit students to a program in order of the rankings of their scores, while a fairer use is to set a threshold score to identify applicants who are "qualified" and then to select equally (e.g., randomly) from within the qualified group. Whether or not one accepts this particular formulation, there is little doubt that there are fair and unfair uses of admission standards and that it is important to distinguish between the two.

No particular criterion of fairness in admission standards can be read into the statutory equal access rule, yet some such criterion is needed to give the rule operational content. One possible approach is to borrow a criterion from employment discrimination litigation. In that field, it has become established that when a selection standard disproportionately excludes applicants from a "protected" class (e.g., members of minority groups), the employer must demonstrate the relevance of the standard and its validity as a predictor of job performance. A similar principle in vocational education would require LEAs or postsecondary institutions to demonstrate the relevance and validity of any selection standard or procedure that excludes higher percentages of special-need students than of other students from desirable vocational programs. Setting some such standard would lend an element of concreteness to the otherwise overly vague stipulation that equal access shall not be denied.

An issue needing special attention is the relationship between admission standards and the supplemental services to which the handicapped and disadvantaged are entitled under the Act. Logically, it would seem that whatever admission standards are warranted in the absence of supplemental services would have to be modified when such services are provided. Supplemental services presumably compensate to some degree for the deficient academic backgrounds or lack of prerequisites of special-need students, raising the probability that a disadvantaged or handicapped student will succeed. It seems to follow, then, that admission standards should be more liberal for students who will receive supplemental assistance than for students who will not have that added support. This proposition is likely to be strongly contested, however. Some will see in it inequitable "reverse discrimination," since it implies favored access to programs for some special-need students. Whether Congress intended that outcome is unclear; but if not, some other theory is needed of how special-need students under Perkins are to be afforded access to better programs than they would otherwise have been able to attend.

Guidance and counseling practices, like admission procedures, can be powerful instruments for sorting vocational students into courses and occupational fields. There are a number of ways in which these sorting mechanisms can be inadvertently or intentionally discriminatory. Even trained and well-intentioned counselors are not immune from responding to stereotypes. Faced with lower-class or underclass youth with poor academic records and little discernible taste for learning, they are likely to direct such clients to relatively undemanding, low-level occupational fields. Placement in a more challenging program, a counselor may reasonably believe, would lead to failure and perhaps to dropping out. If one considers further that motives may not always be benign and that there may be tacit arrangements in some schools and communities to keep different categories of students "in their places," the potential dimensions of the problem become clearer. Individual students and their families supposedly decide whether to enroll in vocational programs and which programs to choose, but the control of information inherent in the guidance and counseling process, combined with admission requirements, can constrain choices severely. At some point this narrowing of options, well-intentioned or not, can be construed as restriction of access.

It is not at all clear that a Perkins-type equal access rule can deal with these relatively subtle means of discrimination. Theoretically, certain provisions of the Perkins Act--the equal access rules themselves and the provisions making available supplemental services for special-need students--should help to break up discriminatory patterns of channeling, leading counselors to evaluate and guide students differently than in the past. In practice, old habits and attitudes are unlikely to be overcome unless there is strong support for change--not mere compliance--at the state and local levels. To promote such support, a federal rule may have to aim at the effects of discrimination rather than at the specific mechanisms by which equality of access is abridged (see below).

At least as important as the threats to access mentioned above is that special-need students may be denied equal opportunity in vocational education as a consequence of locational disparities in program offerings. Such disparities are especially significant for the economically disadvantaged, who are likely to be concentrated in certain schools, neighborhoods, and jurisdictions. If vocational opportunities are less ample, less varied, or of lower quality in places where the disadvantaged attend school, that can be viewed as impairment of access. Moreover, if desirable vocational programs tend to be further from the homes of the disadvantaged than the nondisadvantaged (e.g., because of the placement of area vocational schools), that may also be construed as inequality of access (even if there are no restrictions on admission) because travel costs and travel times are greater, on average, for the disadvantaged than for other students.

It is likely to be extremely difficult, except in the most egregious cases, to distinguish between intentionally discriminatory spatial distributions of offerings and those that are legitimately motivated but have discriminatory effects. Legitimate motives include such things as matching the locations of services to the geographical distributions of demand and holding down the costs of both facilities construction and program operation. However, pursuing such ends can easily lead to patterns in which higher-level vocational programs are concentrated in suburbs rather than in central cities or poor rural communities or in which specialized vocational training institutions are located inconveniently for potential disadvantaged clientele. It is not at all evident where lines should be drawn between acceptable and unacceptable locational policies. Nor is it clear how far LEAs are required to go, in the name of equal access, to eliminate locational disparities inherited from the past.

Cutting across all the aspects of inequality discussed above is an issue familiar from debates over civil rights: is discrimination a matter of effect or intent? If a denial of equal access must be deliberate to be covered by the law, the significance of the equal access provisions is limited. On the other hand, if any disproportionate representation of the handicapped and disadvantaged in vocational programs is to be construed as denial of access, the provision is probably overly broad. The crucial issue may be that of burden of proof. Is the excluded special-need student required to demonstrate that an LEA intentionally denied access, or is the LEA required to show that its placement procedures are rational and equitable? It is perhaps on this level that the framework will have to be defined within which individual cases can be brought and adjudicated.

There is no evidence that Congress, in writing the new equal access rules, thought through the different forms that inequality could take or the multiplicity of means by which equal access could be denied. The statutory equal access provisions are very general, offering no definitions of unequal or impaired access and no operational (or even conceptual) tests of compliance. The Department, instead of working to fill the conceptual and operational gaps has instead sought to eviscerate an already vague requirement. Thus, there is no authoritative answer to the question of what equal access means. Today, no state that signs the required assurances of equal access can be sure of what it is promising, and no potential beneficiary can be sure of what rights he or she has been granted under the law.

IMPLICATIONS FOR RESOURCE ALLOCATION AND TARGETING

One cannot begin to assess the implications of the service mandates and equal access provisions without first specifying which versions, or whose versions, of the rules are to be discussed. The difference between what OVAE/ED's ultra-narrow interpretations would mean and what broader readings would imply is so great that one is scarcely dealing with members of the same species. The narrowest versions are discussed first, followed by the more expansive constructions.

Minimalist Versions of the Rules

The implications of OVAE/ED's minimalist interpretations of Sec. 204 can be summarized briefly. The OVAE/ED version of the equal access rule would add nothing to the opportunities or resources available to handicapped and disadvantaged vocational students. There is at least one important respect (explained below) in which it could have *negative* effects on such students' access to vocational programs. The OVAE/ED version of the Sec. 204(c) service mandates is likely to affect the *mix* of services but not the overall levels of resources and services provided to handicapped and disadvantaged students. The effects on the service mix could well be detrimental, in that they are likely to consist of substitutions of ancillary services for supplemental vocational or basic skills instruction.

The reason that the equal access rule, as OVAE/ED interprets it, does nothing for special-need students is that it guarantees equal access only to programs supported with Perkins funds specifically set aside for such students. The students in question are, by definition, already afforded access to such programs, and so they gain nothing but a redundant guarantee. No disadvantaged student, under this interpretation, is entitled to access to any program other than one that an LEA or institution chooses to designate as supported with Perkins funds for disadvantaged students.

The potential for harm in the OVAE/ED interpretation (as distinguished from mere lack of gain) is that it sets up an incentive for grantees to channel Perkins funds reserved for the disadvantaged into programs in which the disadvantaged are already concentrated or in which they customarily enroll. By allotting funds in this manner, an LEA can avoid potentially troublesome claims for admission to other programs. The adverse consequence is that disadvantaged individuals who might otherwise benefit from Perkins-funded supplemental services in better, higher-level vocational programs may be denied such benefits because of the LEAs' desire to keep such programs "untainted" by federal support.

To illustrate, suppose that an LEA's program for training electronics technicians enrolls only a few disadvantaged students, perhaps because other disadvantaged students are screened out by admission requirements or steered away by counselors. Suppose further that the LEA would, in the absence of the equal access rule, spend some of its Perkins dollars to provide supplemental services to the disadvantaged students in this program. The LEA realizes, however, that if it spends funds in that manner, the electronics technician program will become a program covered by the equal access rule, and additional disadvantaged students, who the LEA considers unqualified, may be able to insist on admission. To avoid the problem, the LEA chooses not to spend its Perkins funds in the electronics program. Instead it spends them on the building maintenance program, in which disadvantaged enrollees predominate. The disadvantaged students who would have received extra, Perkins-funded assistance for their training in electronics are denied that support.

Note that this perverse incentive effect exists only when the equal access rules are interpreted to apply to some programs but not to others. If the rules were interpreted as written, i.e., as applying to the full range of an LEA's vocational offerings, there would be no point in shifting funds away from the higher-quality programs. Faced with a choice between the OVAE/ED version of an equal access rule and no rule at all, the disadvantaged might well be better off with the latter alternative.

Turning to the mandates, the key features of OVAE's minimalist version of Secs. 204(b) and 204(c) are that these provisions (1) do not oblige LEAs to spend anything more than federal aid plus matching funds on special-need students but (2) do specify that certain services must be provided. This means that the mandates, so defined, are unlikely to expand the total resources devoted to vocational education of the handicapped and disadvantaged but are likely to alter the service mix. Given the types of services that are mandated and how little LEAs are required to spend, the net effect may be to diminish rather than enhance the quality of the occupational training that students actually receive.

The reasoning leading to this pessimistic conclusion is as follows. Of the various services mandated in Sec. 204, two items logically take precedence: the requirement in Sec. 204(b) to disseminate information on vocational offerings and the requirement in Sec. 204(c)(1) to assess students' needs. The remaining services called for by Sec. 204(c) can be prescribed only on the basis of the assessment results. If LEAs exhaust the available funds in carrying out the required assessments, they are not obliged, according to OVAE/ED, to do anything further under the mandates. In particular, they need not expend their own funds to provide the special instructional and other services specified under Sec. 204(c)(2). A likely result, then, is that many assessments will be performed that will not benefit students, because funds will be unavailable to provide the special instructional services that the assessments say are needed.[94] At the same time, federal funds will be spent on assessments that might otherwise have been spent on supplemental vocational instruction or supplemental instruction in basic skills. Trading off supplemental instruction for assessments of needs (the latter not followed up with appropriate services) is unlikely to contribute much to students' preparation for employment. Handicapped and disadvantaged students might be better off with no service mandate than with the truncated version supported by OVAE/ED.

More Effective Equal Access Provisions

Suppose now that the equal access rules were to be interpreted more rigorously in the future. How would that affect the resources and services available to handicapped and disadvantaged vocational enrollees? Obviously, no quantitative answer is possible. The potential effect depends on how much inequality of access exists under whatever definition of equal access is adopted. At one end of the continuum of definitional rigor, equal access might be defined so as to exclude only overt acts of discrimination, in which case the resource implications would be minor. At the other end, it might be defined to require progress toward proportional participation of handicapped and disadvantaged students in "better" vocational programs, in which case the impact would undoubtedly be large.

An equal access rule per se would not directly increase the aggregate resources available for vocational programs, although such increases could be brought about indirectly. Instead, such a rule (seriously enforced) would mainly redistribute services and resources among groups. Assuming that special-need students do indeed have more limited access to programs today than do regular students, enforcing equality of access would mean shifting special-need students into programs where they were formerly underrepresented and away from programs (presumably less desirable ones) in which they were previously concentrated. Enrollment of the handicapped and disadvantaged in more desirable programs would increase; enrollment in less desirable fields would fall. It is hardly likely, however, that regular students and special-need students would switch places. Nondisadvantaged students would not be placed in the undesirable programs from which the disadvantaged were being "rescued." Rather, one would expect overall shifts of enrollment from less desirable to more desirable, or from lower-level to higher-level, occupational fields.

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[94] This is precisely the pattern found in NAVE-sponsored case studies of vocational education services and uses of Perkins funds; see Millsap et al. (1989).

How would such shifts affect resources and costs? This depends on two considerations. First, there is the question of whether training in the "better" occupational programs, to which more special-need students would gravitate, costs more than training in the lower-level programs from which they would depart. People often assume that it does, but there seems to be no evidence. Program-specific cost data are not available. Training for business-related occupations, for example, may well be less costly than training for presumably less desirable industrial production jobs, if only because of the latter's costs of materials and equipment. If there is a positive correlation between training costs and the desirability of occupational fields, total costs would become greater under a regime of equal access, but for the moment such an effect is mere conjecture.[95]

The second consideration is whether the costs of special supplemental services would be greater under equal access. Here, the probable answer is "yes." Special-need students are likely to need considerably more extra assistance to succeed in the higher-level, presumably more demanding programs from which they were allegedly excluded than in the lower-level programs to which they were supposedly relegated. If so, equalizing access will tend to raise both total costs and the costs of supplemental services for special-need populations.

The foregoing point underscores the relationship between equal access, on one hand, and mandated services, on the other. The amount of special assistance that a given disadvantaged student "needs" is not fixed but depends on the particular program or occupational field in which that student enrolls. The more demanding the field, the more assistance is needed to ensure a given probability of success. Enforcing equality of access under Sec. 204(a), therefore, could substantially increase the costs of complying with the service mandates under Sec. 204(c) (assuming, for the purpose of this discussion, that the latter constitutes an entitlement). Turning the point around, the availability of funds to support supplemental services for special-need students constrains the degree to which an equal access policy can successfully be implemented. If such funds are limited, some special-need students may be denied the support they need to benefit from access to higher-level, previously inaccessible programs. In this respect, the service mandates and equal access rules interact, and the two need to be interpreted and implemented together.

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[95] This is apart from the question of whether a policy of equal access would stimulate increased enrollment in vocational education generally, a result which, of course, would increase the total costs of vocational education, though not necessarily the total costs of secondary or postsecondary education.

The Service Mandates as Entitlements

In sharp contrast to the OVAE/ED interpretation of the Sec. 204(c) mandates is the view that they should be taken literally. The latter implies an open-ended commitment to provide to each handicapped or disadvantaged vocational student the services required to respond to that student's assessed needs. The mandate, so viewed, would become one of the most important provisions of the Perkins Act. Its effects on vocational education resources and budgets might well be greater than those of the Perkins grants themselves.

The resource and cost implications of a broad service mandate are difficult to quantify because the statutory requirements themselves are qualitative. LEAs would not be obliged to expend specified amounts of money or to supply specified doses of educational resources but rather to assess the needs of each handicapped or disadvantaged vocational student and then to provide needed services. The impact of the mandates would largely depend, therefore, on how the required assessments are carried out: by whom, under what rules, and subject to what constraints.

Under P.L. 94-142, similar assessments are conducted according to statutory procedures and safeguards for developing individualized educational plans (IEPs).[96] The Perkins Act itself does not require IEPs or IEP-type processes. The P.L. 94-142 requirements do carry over to handicapped enrollees in vocational programs (as stipulated in Sec. 204(a)(3)), but disadvantaged vocational students are not afforded similar protections. Conceivably, therefore, need assessments for the disadvantaged would be conducted in such a manner that only modest doses of special services would be prescribed. LEAs are unlikely to voluntarily detect "needs" that imply costly special services. On the other hand, it is conceivable that procedures similar to those used for the handicapped would eventually be extended to the disadvantaged also (perhaps through litigation) and that the needs of both groups will be judged in more or less the same way.

If Sec. 204(c) did evolve into a P.L. 94-142-type mandate for disadvantaged vocational enrollees, what might be the effects on resources and costs? There is room for divergent views on this issue. Interestingly, the Congressional staff person interviewed for this study who most strongly favored a broad, P.L. 94-142-type interpretation of the mandate felt that the costs of mandated services for the disadvantaged would be relatively modest. Assessments of disadvantaged students, he believed, would typically call for modest amounts of remedial instruction in basic skills, generally not costing more than could be paid for with Perkins funds. This seems unrealistic, however. A relevant standard of comparison is that under the federal program of compensatory education for the disadvantaged, extra costs of compensatory instruction in basic skills have for years been in the range of 20 to 25 percent of the costs of regular instruction. Perkins grants for the disadvantaged are only a fraction as large. It seems likely, therefore, that even if special services for the disadvantaged consisted mainly of remedial instruction in basic skills, the costs could be several times larger than the amounts of Perkins aid (note that the mandated assessments alone are said sometimes to exhaust the available Perkins funds). If the needed services also include modifications of vocational instruction to accommodate the learning problems of the disadvantaged (e.g., smaller vocational classes, use of teaching aides), then the costs could become much greater.

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[96] Among other things, these procedures specify who is to participate in drawing up the IEP for each student, provide for participation of the student's parents in the planning process, and establish appeal procedures for parents dissatisfied with the plans proposed for their children.

But despite the P.L. 94-142 precedent, it seems unlikely that LEAs could be compelled under the Perkins Act to spend large amounts of their own money on special services for disadvantaged vocational students. The difference between the two situations is that in the case of the handicapped, a civil right to appropriate educational services has been established in the law.[97] States and LEAs are legally obliged to provide such services regardless of whether they accept federal aid. In the case of the Perkins Act, however, the obligation to comply with the Sec. 204(c) mandate is contingent on accepting federal funds. An LEA that declines such funds is not required to provide the mandated services. If the costs of compliance became large, it is likely that large numbers of LEAs would decline to participate. This could leave the disadvantaged with fewer services than they would receive under a Perkins Act with no service mandate provisions. A legal question requiring further analysis is whether an LEA can opt out selectively from the Perkins program for the disadvantaged, as OVAE/ED contends, thereby freeing itself from the obligation to provide mandated services for the disadvantaged under Sec. 204(c), or whether it remains subject to the mandate if it accepts *any* Perkins funds. If the former view is correct, the cost of opting out is relatively low. If an LEA were required to forego all Perkins funds to free itself from the mandate, the cost of opting out would be much higher, but still not necessarily high enough to induce LEAs to spend several times the amount of their federal grants on disadvantaged vocational students.

As the foregoing comments make clear, the significance of the Perkins service mandates is very different for handicapped than for disadvantaged students. Handicapped students are already the beneficiaries of a well-established, more detailed, and considerably stronger service mandate under P.L. 94-142. That mandate is unambiguously open-ended and not tied to the availability of federal funds, and it applies as much to handicapped vocational students as to any other handicapped students. It provides considerably more potent service guarantees and protections than Sec. 204(c) of the Perkins Act. It appears, therefore, that Sec. 204(c) adds little to the rights of the handicapped. For them, its function is mainly to reiterate the service entitlements of P.L. 94-142 and to make clear that they apply fully to handicapped enrollees in vocational programs.

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[97] That right is established under Sec. 504 of the Rehabilitation Act rather than under P.L. 94-142 itself.

Disadvantaged students, on the other hand, have no other claims to services comparable to those extended to the handicapped under P.L. 94-142. For them, Sec. 204(c) creates a service mandate where none was found before. At the same time, it potentially imposes (if construed broadly) a new and potentially substantial fiscal burden on Perkins grantees. Arguments about the meaning of the Perkins service mandates have to do mainly, therefore, with how the disadvantaged are to be treated in vocational education. The rights of the handicapped are unlikely to be much affected by how broadly or narrowly the Perkins mandates are construed.

Finally, it should be recognized that how expansively the service mandates are interpreted has implications for other Perkins provisions. If the entitlement view of the mandate were eventually to prevail and if the requirements governing needs assessments and prescriptions of special services were made rigorous (like the IEP requirements in P.L. 94-142), many of the fiscal controls discussed in previous chapters--supplemental services, excess cost, matching, nonsupplanting--would become superfluous. There would be little reason to insist on particular uses of federal aid if the amounts of aid were small compared with the costs of federally mandated special services. Thus, evolution of the service mandate provisions could eventually make the other resource allocation and targeting provisions obsolete, leading to major simplification of the law. The notion of service standards as an alternative to targeting federal funds could become a reality. However, while this would reduce administrative complexity, paperwork, and problems of compliance, it is unlikely that grantees would consider these gains to outweigh the substantially larger fiscal obligations that the mandates would create.

SUMMARY: FINDINGS AND POLICY OPTIONS

The present status of the Perkins service mandates and equal access rules can be summarized as follows: There are on the books these potentially important provisions, which if interpreted broadly and implemented effectively would enlarge substantially the opportunities and resources available to special-need students in vocational education. But instead of trying to make them effective, OVAE/ED has sought either to minimize their effects or to sweep them aside with interpretations that render them meaningless. Whether this reflects antipathy to the Congressional purpose or unwillingness to restrict grantees in an era of deregulation, the results are the same: guarantees of equal access are not being enforced, and mandated services are not being provided. Moreover, the requirements in their present diminished forms may actually harm the intended beneficiaries. The equal access rule, as OVAE/ED construes it, may discourage grantees from channeling Perkins funds and disadvantaged students into higher-level vocational programs. The service mandates, as OVAE/ED interprets them, are likely to divert federal funds into marginally useful ancillary services and away from improved vocational instruction. The handicapped and disadvantaged would probably be better off with no such rules at all than with the present emasculated versions.

Congress can respond to this situation either by accepting (or ignoring) what OVAE/ED has done to Section 204 of the Act or it can decide to instill into the service mandates and equal access rules the specificity, clarity, and force needed to make them effective. The choice with respect to the equal access rule is particularly clear-cut: either do what is necessary to make the guarantees of equal access meaningful or acquiesce in OVAE/ED's de facto repeal of that section of the Act. The former would require Congress to take steps like the following: (1) reaffirm that the Perkins equal access requirement applies to *all* vocational education programs, federally funded or not, and that denial of equal access renders an LEA or institution ineligible for federal aid; (2) incorporate specific standards of equality of access into the law or the legislative history, covering such matters as admission requirements, guidance and placement practices, the geographical distribution of vocational offerings, and requirements for providing special assistance, where needed, to handicapped and disadvantaged students; and (3) establish procedures for monitoring equality of access and/or channels through which individuals who believe they have been denied access can seek relief. So augmented, the equal access rule might do as much to expand opportunities for special-need students as the Perkins grants themselves.

The choice facing Congress with respect to the service mandates in Sec. 204(c) is more difficult. On one hand, OVAE/ED's view that the mandates merely specify how Perkins set-aside funds are to be used is irreconcilable with the statutory language, and its implications, as noted, may be educationally counterproductive. On the other hand, it is unclear whether Congress really intended to create a new, open-ended service entitlement for disadvantaged vocational enrollees (or that it would have done so if it had recognized the potential fiscal implications of an entitlement approach). Given the unsatisfactory status quo, the issue urgently requires clarification.

One available option, of course, is to confirm that the entitlement interpretation is correct and that Sec. 204(c) is to be implemented as written. This would entail rejecting OVAE/ED's interpretation, reaffirming that grantees must offer all handicapped and disadvantaged vocational students the full set of services specified in the Act, and spelling out grantees' obligations under the law. It would be useful, under the latter heading, for Congress to say unambiguously that (a) each handicapped or disadvantaged secondary vocational student must receive instructional and other vocational education services appropriate to meet that student's assessed needs, (b) an LEA's obligation to provide such services is not limited by the availability of federal funds to pay for them, and (c) the obligation falls on each LEA that receives federal aid under the Act.

Alternatively, Congress might determine that it did not (or does not) intend to create an open-ended, potentially expensive new service entitlement for disadvantaged vocational students. If so, it would probably be best to eliminate the service mandate provision entirely. Intended or not, the principal function of Sec. 204(c) in its present form is to direct into ancillary services federal funds that might otherwise be used to expand vocational education opportunities for special-need students. This is a "benefit" that the would-be beneficiaries are better off without.

Conceivably, a compromise, or in-between, option can be formulated that preserves the main positive idea underlying Sec. 204(c) without affecting the service mix adversely or imposing heavy fiscal obligations on the service providers. That idea--substituting service standards for controls over the uses of federal funds--is very attractive in principle, as it promises both improved services for special-need students and less intrusive federal rules. Among the possibilities that may merit consideration are setting up limited claims to special services rather than open-ended entitlements, requiring states to develop service standards of their own, and limiting coverage initially to small subsets of the potentially eligible target populations. At the moment, however, no promising compromise solutions have been developed; unless that changes, Congress will have to deal with the polar options laid out above.

8. THE INTERSTATE AND INTRASTATE FUND DISTRIBUTION MECHANISMS

Unlike the previous chapters, which have focused on provisions for controlling the uses of Perkins funds by grantees, this chapter considers how each grantee's allotment of funds is determined. It examines the mechanisms for distributing Perkins grants for the handicapped and disadvantaged among and within states and assesses their implications for resource allocation and targeting. It also identifies problems with the existing mechanisms and suggests alternative distribution methods.

The rationale for including the fund distribution issues in this study may not be immediately apparent. The question of how much federal aid a grantee gets (the distribution issue) is logically separable from the question of whether the grantee uses that aid to support the intended activities and beneficiaries (the targeting issue). But from a broader, or "system," perspective, resource distribution and resource use are intertwined. If, say, aid for the disadvantaged is maldistributed within a state, so that some LEAs receive substantially more funds than others relative to their service needs, then types of disadvantaged students who are served in some places will be unserved, or less adequately served, in others. From the point of view of the system as a whole, this becomes a targeting problem--a failure to direct resources to the intended beneficiaries. Similarly, if the interstate distributions of aid for the handicapped and disadvantaged do not correspond reasonably well with needs for services, targeting will be adversely affected. A complete assessment of targeting, therefore, requires evaluations of both the interstate and intrastate distributions of aid.

This chapter, of necessity, offers only a limited inquiry into the Perkins fund distribution mechanism and not a full-scale "formula study." The latter typically center around statistical analyses of actual fund distributions and simulations of alternative distributions. An example of such a study of the interstate distribution of federal vocational education aid is Grasberger et al. (1980). An example--probably the only one--of a full-scale study of the intrastate distribution of vocational education funds is Benson and Hoachlander (1981b). Both studies deal, as their dates indicate, with fund distributions prior to the Perkins Act. The lack of comparable empirical studies of the current fund distribution mechanisms is a serious gap in the policy literature. This chapter does not fill that gap, as it does not present data on actual distributional outcomes. It does deal, however, with major issues concerning the design of the fund distribution system and with their implications for the targeting of Perkins funds.

THE EXISTING MECHANISM AND ITS EVOLUTION

The Perkins Act sets forth a series of steps that must be followed, first by ED/OVAE to distribute federal aid to states and then by individual states to distribute aid for the handicapped and disadvantaged among the eligible recipients (LEAs and postsecondary institutions) within their boundaries. Most aspects of the intrastate distribution process are prescribed in detail in the statute, but some authority has been delegated to the states, especially in selecting specific formula factors. Moreover, as will be seen, the apparent prescriptiveness of the statute has not precluded some creative improvisation at the state level, of a kind that might surprise those who drafted the legislation. The following description covers all but the most minor features of the distribution process.[98]

The Distribution of Funds among States

The aggregate funds available for Perkins grants to states (parts of which are subsequently to be earmarked for the handicapped and disadvantaged) are distributed among the states according to a formula set forth in Sec. 101 of the Act. This formula, which has remained essentially unchanged since it was first introduced in the Vocational Education Act of 1963, allocates funds in proportion to a weighted sum of state populations in certain age brackets, except that an adjustment factor is applied that modifies the allocations in an inverse relationship to state per capita income. Specifically, each state's allotment is calculated according to the formula,

$$S = \frac{100}{85} \$TOT \left[.50 \frac{P15 \cdot R}{\Sigma(P15 \cdot R)} + .20 \frac{P20 \cdot R}{\Sigma(P20 \cdot R)} + .15 \frac{P25 \cdot R}{\Sigma(P25 \cdot R)} \right],$$

where P15, P20, and P25 are the state's populations in the 15-19, 20-24, and 25-65 age ranges, respectively; R, the state's income-based "allotment ratio," is given by $R = 1 - .5(PCI/USPCI)$, subject to the constraints that R may not be less than 0.40 or greater than 0.60; the sums in the denominators are over all states; $TOT is the total amount of aid available for distribution under the formula; PCI is the state's per-capita personal income; and USPCI is average per-capita personal income in the United States.[99]

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[98] This description covers the distribution of grants for state programs under Sec. 3(a) and Sec. 101 of the statute. These grants amount to $819 million in FY 1989, or 89 percent of all vocational education funds appropriated under the Perkins Act.

Under the Perkins Act, the allotments calculated according to the foregoing formula are subject to certain constraints. One is a "hold-harmless" provision, guaranteeing each state at least the same total funding as it received in FY 1984; another establishes a minimum allotment for each state (under certain conditions) of one-half of one percent of the total funds available; and a third limits to 50 percent the year-to-year increase in any state's allotment (P.L. 98-524, Sec. 101(a)(3)).

Earmarking of Funds for the Handicapped and Disadvantaged

Each state is permitted to reserve up to 7 percent (or in some cases, slightly more) of the funds distributed under the interstate formula for state-level administration of the state vocational education plan.[100] Of the remainder, shares of 10 percent and 22 percent, respectively, are earmarked for vocational education of the handicapped and disadvantaged.[101] The 10-percent and 22-percent figures apply uniformly to all states; there is no provision for them to vary in relation to the actual state percentages of handicapped or disadvantaged enrollees.

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[99] Notes regarding the formula: (1) The formula presented here is mathematically identical to the formula specified narratively in the statute but does not have precisely the same form. Some factors and terms have been combined for simplicity. (2) Certain special rules pertaining to U.S. territories are not presented here. (3) The factor 100/85 at the beginning of the formula reflects the peculiar statutory formulation whereby 85 percent of available funds are distributed according to populations in the three age brackets (with weights of .50,. 20, and .15, respectively) and the remaining 15 percent is allocated in proportion to the resulting allotments. Combining the 100/85 factor with the population weights yields the true weights assigned to each age bracket, which are (approximately) 58.8 percent for population 15-19, 23.5 percent for population 20-24, and 17.6 percent for population 25-65.

[100] The allowance for state administration may exceed 7 percent of the total grant by the amount, if any, that required outlays for certain sex equity activities exceed 1 percent of the same total (P.L. 98-524, Sec. 102(b)).

[101] The statute describes this earmarking in two stages. First, the sum remaining after the deduction for state administration is divided in proportions of 57 percent and 43 percent, respectively, between the Vocational Education Opportunities Program under Title IIA (programs for specific target groups) and the Improvement, Innovation, and Expansion Program under Title IIB (Sec. 102(a)). The 57-percent share is then subdivided into six portions--the 10 percent and 22 percent shares for the handicapped and disadvantaged and additional shares for four other target groups (Sec. 202).

The Distribution of Funds Within States

Each state is required to distribute 100 percent of funds earmarked for the handicapped and disadvantaged to eligible local recipients, which must be either LEAs or postsecondary institutions.[102] These distributions are to be made according to the following formulas prescribed in the statute:

Handicapped. Of the funds earmarked for handicapped vocational students, 50 percent are to be distributed in proportion to the number of economically disadvantaged individuals enrolled by each eligible recipient; the other 50 percent are to be distributed in proportion to the number of handicapped individuals served *in vocational education* by each eligible recipient in the preceding year (Sec. 203(a)(1)).

Disadvantaged. Of the funds earmarked for disadvantaged vocational students, 50 percent are to be distributed in proportion to the number of economically disadvantaged individuals enrolled by each eligible recipient; the other 50 percent are to be distributed in proportion to the number of disadvantaged individuals served *in vocational education* by each eligible recipient in the preceding year (Sec. 203(a)(2)).

In addition, a separate suballocation rule requires each recipient to earmark for vocational education of limited-English proficient (LEP) students a fraction of the 22-percent set-aside for the disadvantaged equal to not less than the ratio of LEP enrollees to total disadvantaged enrollees in that LEA or institution (P.L. 98-524, Sec. 203(a)(3), as amended by Sec. 705 of the Perkins Vocational Education Act Technical Amendments of November 1, 1985).

Expressed mathematically, the distribution formulas for the handicapped and disadvantaged are,

$$\mathrm{HCAID} = \mathrm{HCTOT}\left[.5\left(\frac{\mathrm{ECDIS}}{\mathrm{STECDIS}}\right) + .5\left(\frac{\mathrm{HCSERV}}{\mathrm{STHCSERV}}\right)\right] \text{ and}$$

$$\mathrm{DISAID} = \mathrm{DISTOT}\left[.5\left(\frac{\mathrm{ECDIS}}{\mathrm{STECDIS}}\right) + .5\left(\frac{\mathrm{DISSERV}}{\mathrm{STDISSERV}}\right)\right],$$

where HCAID and DISAID are a recipient's allotments of aid for the handicapped and disadvantaged, respectively; HCTOT and DISTOT are the amounts of the state's total allotment of Perkins funds set aside for the handicapped and the disadvantaged, respectively; ECDIS and

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[102] P.L. 98-524, Sec. 113(b)(4). Although states are generally prohibited from retaining any funds earmarked for the handicapped and disadvantaged at the state level, state-operated schools serving the handicapped or disadvantaged are treated as eligible recipients for the purpose of this distribution, and therefore they can receive allotments of funds.

STECDIS are the numbers of economically disadvantaged persons (whether served in vocational education or not) enrolled by the recipient and enrolled in the whole state, respectively; HCSERV and DISSERV are the numbers of handicapped and disadvantaged students, respectively, served by the recipient *in vocational education* in the previous year; and STHCSERV and STDISSERV are the numbers of handicapped and disadvantaged persons served in vocational education in the previous year in the whole state.

There are no constraints on the allotments of funds to individual grantees under these formulas--i.e., no floors, ceilings, or hold-harmless provisions.[103] However, the statute does impose on the distribution of all types of Perkins grants combined the constraint that

> ...States will allocate more Federal funds to eligible recipients in units of local government which are economically depressed (including both urban and rural units) or which have high unemployment, as determined by the State (P.L. 98-524, Sec. 113(b)(5)).[104]

Although this provision does not apply specifically to grants for the handicapped and disadvantaged, it does apply to aggregates of which those grants are parts. Hence, it could potentially influence the distributions of aid to the target groups.

The Act leaves it to each state to choose specific definitions of the key formula factors, the number of economically disadvantaged persons enrolled and the numbers of handicapped and disadvantaged persons served in vocational education, from among the many possibilities allowed by the elastic federal definitions of "handicapped," "disadvantaged," and "vocational student." This gives state administrators substantial latitude to influence the formulas and the outcomes--a point whose implications are explored further below.

Apart from defining formula factors, many states have also assumed another, more creative role in the distributional process that one would not anticipate from reading the Perkins Act itself. These states have added to the prescribed formula allocation process an extra step, *not called for in the statute or the regulations and apparently not contemplated by Congress*, that materially alters the distributional outcomes. Instead of distributing funds among all eligible recipients according to the formulas specified in the law, these states first divide the available funds into separate "pools" for different classes of recipients; then, having done so, they use the formulas to distribute funds among the recipients within each pool. Typically, there are two pools--one for LEAs and one for postsecondary institutions, but sometimes there are more. New York State, for example, has three pools--one for LEAs, one for BOCES,[105] and one for postsecondary institutions. Since no such division of funds is provided for in law, there are no rules governing the sizes of these pools. The apportionment among classes of recipients (apparently whatever classes the state chooses) is, therefore, wholly at state discretion.[106] Although such arrangements have been approved tacitly by OVAE, the existence of an extra-statutory procedure that substantially alters the results of an otherwise statutorily prescribed process is a matter of serious concern.[107] Its implications are examined below.

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[103] A provision in the Senate bill that would have established an optional floor by allowing states to exclude from funding any recipients entitled to less than $1,000 under the formulas was rejected in the conference committee, but the Act does say that states may "encourage" any eligible recipient entitled to a grant of $1,000 or less to operate programs jointly with another recipient (P.L. 98-524, Sec. 203(b)).

[104] This requirement has been interpreted to mean that states must allocate more total dollars, not just relatively more or more per student, to depressed or high-unemployment areas than to other areas. (Conference Report on H.R. 4164, item 218; 34 CFR, Sec. 401.19(b)(4)). The effects of this seemingly drastic constraint are greatly diminished, however, by the discretion left to each state to construct its own definition of economically depressed or high-unemployment areas.

A final component of the intrastate allocation process is a procedure for reallocating funds that are not needed, or are returned to the states, by the initial recipients. OVAE/ED has indicated, in response to a comment on the regulations, that states may reallocate such unspent funds either according to the statutory formulas or to recipients that the states decide have the "greatest needs" for additional funds (50 FR 33287). There have been active controversies as to (a) the circumstances under which states must use the formulas and those under which they can make discretionary allocations on the basis of need and (b) what constitutes a valid criterion of need, but the details are too complex to go into here.

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[105] Boards of Occupational and Continuing Education Services--administrative units that operate area vocational schools.

[106] Information on these pooling procedures was provided by OVAE officials and has been confirmed by findings from the NAVE-sponsored case studies and in informal conversations with state officials.

[107] The reason that states, and apparently OVAE, believe that subdividing federal aid into state-defined pools is acceptable under the Act seems to be that such pools were allowed under previous legislation. As explained in detail in Long and Silverstein (1981b, Chapter 4), states subdivided funds into all kinds of pools under the 1976 Amendments, including pools for different purposes and target groups as well as for different classes of recipients. Some but not all these divisions were explicitly authorized in BOAE manuals and memoranda. The statutory basis for fund distribution is fundamentally different under the Perkins Act, however, from what it was previously. Under the 1976 rules, each state was permitted to design its own formulas, and fund pools were features that states were free to include in their formulas if they so chose. Under the Perkins Act, Congress has prescribed nationally uniform formulas that states *must* use, and state discretion seems to be limited to providing the detailed definitions of formula factors. Modifying the statutory formulas, whether by setting up pools or otherwise, is not authorized by the Act, and it is not clear under what legal interpretation such state action could be approved.

Evolution of the Distribution Mechanism

The present distribution mechanism is a mix of components inherited from the past and components newly designed for the Perkins Act, generally in response to criticisms of the previous arrangements. As already noted, the interstate distribution formula has remained essentially unchanged since its first appearance in the VEA of 1963. The final report of the NIE Vocational Education Study (1981), drawing on Benson and Hoachlander (1981b), raised issues concerning the rationality and equity of the interstate formula and suggested alternatives (some of which are discussed below) but led to no Congressional action. Apparently, there has not been sufficient dissatisfaction with the traditional interstate distribution to fuel a political battle over this formula.

In contrast, both the procedures for distributing funds within states and the relationship of those procedures to the percentage set-asides for the handicapped and disadvantaged have been changed substantially in each reauthorization of the federal vocational education program. These elements are very different under the Perkins Act from what they were under the earlier statutes. The trend has been toward greater prescriptiveness with respect to the intrastate distribution of aid for the handicapped and disadvantaged, but also, in the latest round, toward greater simplicity.[108] Thus, although there is now, for the first time, a federally prescribed intrastate distribution formula, this formula reflects few of the factors that states were supposedly to take into account in designing formulas of their own under the 1976 Amendments. The following is a brief summary of this evolution.

Under the 1963 Act, there was no earmarking of specific amounts of funds for the handicapped or disadvantaged. It was up to each state to decide how much, if anything, to spend on disadvantaged students (the handicapped were not specifically covered). There was also no federally prescribed intrastate distribution mechanism, either for federal aid generally or for aid to special-need students. States were free to distribute federal funds among LEAs as they chose, subject only to the vague exhortation to give due consideration...to the results of periodic evaluations of State and local vocational education programs and services in light of information regarding current and projected manpower needs and job opportunities, and to the relative vocational education needs of all groups in all communities in the State (P.L. 88-210, Sec. 5(a)(2)).

The 1968 Amendments introduced the set-asides of certain percentages of each state's allotment for the handicapped and disadvantaged (10 percent and 15 percent, respectively) but still did not prescribe a specific intrastate distribution process either for federal funds generally or for funds earmarked for the target groups. Allocative discretion remained with the states, but the list of items to be given "due consideration" grew considerably. States were now to consider manpower needs and job opportunities (particularly "new and emerging" ones); "the relative vocational education needs of all population groups in all geographical areas and communities in the State"; the relative ability of LEAs, particularly in economically depressed or high-unemployment areas, to support vocational education; the relative costs of programs in different LEAs; and whether LEAs were making "reasonable" tax efforts. Funds were not to be allocated by any method, such as matching of local outlays at uniform rates, that failed to take these factors into account (P.L. 90-576, Sec. 123(a)(6)). Of special relevance to the handicapped and disadvantaged, states were also directed to take particular account, in assessing vocational education needs, of the needs of "persons with academic, socioeconomic, mental, and physical handicaps that prevent them from succeeding in regular vocational education programs" (ibid.). Thus, the needs of the handicapped and disadvantaged became a fund distribution criterion, even though it was assigned no specific role or weight in the distribution process.

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[108] In sharp contrast, there has been a shift away from prescriptiveness with respect to the intrastate distributions of all Perkins grants except those for the handicapped and disadvantaged, to the extent that the other distributions are now totally deregulated and left to state discretion.

In proceedings leading up to the 1976 reauthorization of the VEA, much dissatisfaction was expressed in the Congressional committees about the manner in which federal funds were being distributed within states (Long and Silverstein, 1981b; NIE Vocational Education Study, 1981). In the 1976 Amendments, Congress attempted to assert greater control over those distributions, while still stopping short of prescribing intrastate distribution formulas. To do so, it shifted from exhorting states to "consider" certain factors to a seemingly more prescriptive approach. The 1976 statute required, first, that states "give priority" to recipients that

> (i) are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without federal assistance, and
> (ii) propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the States and the nation (P.L. 94-482, Sec. 106(a)(5)(A)).

Second, it stipulated that states should base fund distributions on "economic, social and demographic factors relating to the need for vocational education among the various populations and various areas of the state," of which the two "most important" factors were to be

> (I) in the case of local educational agencies, the relative financial ability of such agencies to provide the resources necessary to meet the need for vocational education in the areas they service and the relative number or concentration of low-income families or individuals within such agencies, and (II) in the case of

> other eligible recipients, the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students and the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language (P.L. 94-482, Sec. 106(a)(5)(B)).

Once these provisions became law, there ensued a lengthy, laborious, frustrating--and ultimately unsuccessful--process wherein BOAE, interacting with the states, struggled to give operational content to the newly prescribed allocative criteria. Numerous interpretations, policy memoranda, and even fund distribution manuals were issued, seeking to define the statutory criteria operationally and to explain how they were to be integrated into a fund allocation system.[109] Along the way, BOAE settled one key issue by stipulating that states had to distribute funds by formula--something that Congress had never said explicitly itself. However, other major issues were never resolved satisfactorily, among them how the multiple criteria mentioned in the law were to be combined and weighted and--of special relevance to the handicapped and disadvantaged--how intrastate allocations under the formula were to be integrated with the state-level percentage set-asides for special-need populations.[110]

The outcomes of this process have been analyzed in depth, from a legal perspective in Long and Silverstein (1981b) and from technical and statistical perspectives in Benson and Hoachlander (1981b). In essence, Congress had promulgated too many criteria, some mutually inconsistent, and specified them too vaguely to produce the intended results. The distributions did not turn out as intended. According to Benson and Hoachlander (1981), systematic statistical relationships generally could not be detected between fund allocations and the Congressionally identified "most important" and "priority" factors. States were able to take advantage of gaps and contradictions in the federal specifications to produce essentially the distributional patterns of their choice. Trying to control formula allocations without specifying the formulas themselves proved to be an unworkable approach (Benson and Hoachlander, 1981b; NIE Vocational Education Study, 1981).

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[109] See Long and Silverstein (1981b) for details of the BOAE interpretations and citations of documents.

[110] Lacking guidance on the latter issue, some states chose to distribute all federal funds under a single formula and then to impose the percentage set-aside requirements on the individual grantees, while others applied the percentage set-asides first, creating separate state-level pools of aid for the handicapped and disadvantaged, which were then distributed by separate formulas to the grantees. These two approaches yield very different distributions of aid for the handicapped and disadvantaged (Long and Silverstein, 1981b; Benson and Hoachlander, 1981b).

In drafting the Perkins Act, Congress seems to have reacted to the perceived failure of the 1976 approach by shifting its strategy in two opposite directions at the same time. Its new strategy with respect to aid for the handicapped and disadvantaged is highly prescriptive: all states must use the previously described statutory intrastate distribution formulas. Its new strategy with respect to all other Perkins grants is total deregulation; states may distribute Perkins funds *not* earmarked for the handicapped and disadvantaged--68 percent of the total--any way they choose. This arrangement has the surface appearance of a compromise--controlling tightly the distribution of funds of clearest federal interest, the handicapped and disadvantaged set-asides, while letting states distribute the rest as they like. However, it raises the discomforting question of whether prescribing the distribution of a minor fraction of federal aid is distinguishable from prescribing nothing at all, considering that states, given discretion to distribute the larger share of Perkins funds, seem able to shape the entire distribution to their liking. This is another issue taken up below.

ISSUES CONCERNING THE INTERSTATE DISTRIBUTION

This discussion of the interstate distribution of aid for the handicapped and disadvantaged deals with three topics: the design of the interstate fund distribution formula, the implications of earmarking fixed percentages of state allotments for handicapped and disadvantaged students; and the net distributional effects, as opposed to the nominal effects, of the present fund allocation process. Some of the comments on the first and third of these topics necessarily pertain to the distributions of all types of Perkins grants, but the emphasis is on distributions of the handicapped and disadvantaged set-aside funds.

The Design of the Interstate Distribution Formula

The interstate fund distribution formula is tradition-encrusted, well-entrenched, and politically difficult to reconsider. It seems to have received very little Congressional attention during the 1984 reauthorization process, despite the findings as to its shortcomings presented in the final report of the NIE Vocational Education Study (1981). Two things have occurred, however, that may enhance the prospects for a more serious review in the future. One is that patterns of enrollment in vocational education have changed and are continuing to change in ways that make the established formula seem increasingly inappropriate. The other is that Congress altered the goals of the federal vocational education program in 1984, emphasizing the relatively specific goals of program improvement and access for special-need students over the predominant former goal of subsidizing vocational education generally. Both developments imply that the existing formula, whatever its former merits or faults, is now less compatible with federal purposes than it was under prior law.

The specific features of the formula that have attracted criticism in the past or that are called into question by the shift in Congressional emphasis are the following:

1. The use of broad population counts, rather than indicators of need or demand for vocational education services, as the main allocation factors;
2. The absence of factors reflecting current federal goals in vocational education--in particular, factors reflecting the interstate distribution of special-need populations; and
3. The inclusion of an adjustment factor for per-capita income, but not adjustments for other arguably relevant factors, such as program costs.
4. The imposition of constraints on the formula-based fund allocations--in particular, the requirement that each state receive at least one-half of one percent of all Perkins funds.

Each feature is considered, along with relevant alternatives, in the following discussion.

The Population Factor. Even if one thinks of federal aid as nothing more than a general subsidy for vocational education, there is still reason to question the role of population as the main formula factor. Using population as a proxy for a more direct measure of need or demand for vocational education would not be a problem if the ratio of vocational education enrollment or vocational education services were roughly uniform across states, but that apparently is not the case. According to data developed in Benson and Hoachlander (1981b) and presented in the report of the NIE Vocational Education Study (1981), the enrollment-to-population ratio varied widely among states (as of 1979), and consequently the amount of federal aid per vocational student varied substantially and erratically from one state to another.[111] This variability makes it difficult to claim that a population-based distribution matches federal aid to each state's needs for vocational education funds.

The lack of recent state-level data on participation in vocational education makes it impossible to measure the variability in aid per vocational enrollee under Perkins, but there is no reason to think that the allocations have become more uniform. If anything, recent educational reform efforts may have made the pattern more erratic. Such reforms are likely to drive down high school vocational enrollment by requiring students to take more academic courses; but because some states have implemented reforms more rapidly than others, a probable side effect is to add to the interstate variability in both vocational enrollment relative to population and aid per vocational enrollee. Changing enrollment patterns, therefore, have probably further undercut the rationale for distributing funds according to population.

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[111] This refers to variation other than the intentional variation based on per-capita income, which is discussed separately below. Note that the vocational enrollment data used by Benson and Hoachlander are from the old Vocational Education Data System (VEDS) and are of dubious quality. Some of the apparent variation in enrollment rates among states may reflect interstate differences in defining vocational enrollments rather than true enrollment differences. On the other hand, because the data represent counts of persons enrolled rather than FTE enrollments, they may tend to understate the range of variation in FTE enrollment and, hence, in vocational education services.

Would it be feasible to use a more direct indicator of need or demand for vocational education in the formula? The most obvious possibility is to use vocational education enrollment itself, or, preferably, FTE vocational enrollment, as the latter allows for interstate variation in the amount of vocational education "consumed" by each participant. But unfortunately, using enrollment data is not a viable short-term option. Data are not now available on vocational education enrollment by state, and developing data of adequate quality would be difficult.[112] Using state-generated data for the purpose would be unsatisfactory, given each state's clear self-interest in the results, unless the data collection procedures were standardized and closely monitored by the federal government. The Perkins Act itself (Sec. 421) calls for an effort by the National Center for Education Statistics (NCES) to establish a new vocational education data reporting system, which, once developed, would presumably yield the necessary enrollment data, but little progress has been made thus far. Until that changes, an enrollment-based distribution of aid is not a feasible alternative.

Allocation factors other than vocational enrollment can also be contemplated as alternatives to the present population variables. One possibility, less drastic than shifting to enrollment, is to allocate according to the noncollege-going population rather than the total population of each state--the rationale being, of course, that the demand for vocational education arises mainly from the noncollege-going group. Another option, reflecting a very different concept of demand or need for vocational education, would be to allocate according to each state's employment in the types of occupations for which people can prepare in vocational education programs (or, more generally, according to indicators of the labor-market demand for persons with vocational training). The data required to implement these concepts are not immediately at hand, however, and the concepts themselves need further development and evaluation.

A more mundane option, but one that is clearly feasible, would be to allocate funds according to enrollment (total, not vocational) in the pertinent classes of institutions.

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[112] The failure of the costly effort to develop satisfactory vocational education data, including enrollment data, under the Vocational Education Data System (VEDS) provides ample warning as to the obstacles to data development in this field. See, e.g., the discussion of the VEDS data in Hoachlander, Choy, and Lareau (1985) and the assessment by Barnes (1984).

Specifically, funds could be allocated according to enrollments in the secondary schools, area vocational schools, technical institutes, and two-year community colleges of each state (with differential weighting for the different types of institutions, if desired). This would not reflect interstate variations in demand for vocational education directly, as both vocational and nonvocational enrollees would be counted, but it would probably approximate them more closely than the present population-based allocations.

In the short run, only the last-mentioned option is feasible, but over the longer term, better options could be made practicable. Given adequate federal support, state-by-state data on enrollment, FTE enrollment, or course enrollment in vocational education could probably be produced in two or three years and then seriously considered for use in the funding formula (such data, incidentally, would serve multiple purposes in program evaluation and policy analysis as well as being useful for distributing funds). Therefore, development of enrollment-related data for future use seems an option well worth pursuing.

"Missing" Factors: the Numbers of Special-Need Students in Each State. Given that one of the two main purposes of Perkins grants is to finance services for special-need students, it is difficult to explain why numbers of special-need students in each state are not taken into account in the interstate distribution of Perkins funds.[113] The relevance of these numbers arises out of the uneven distributions among states of some of the target groups that 57 percent of Perkins funds are intended to support. In particular, the fraction of the student population classifiable as disadvantaged varies widely. For example, the estimated percentage of children below the poverty line is approximately 2.5 times as great in some states as in others. Therefore, distributing aid to states with no regard to the prevalence of disadvantage and then setting aside the fixed 22-percent share of each state's allotment for the disadvantaged results in large interstate disparities in aid per disadvantaged person. The same applies to the interstate distribution of aid for vocational education of the handicapped, except that the disparities are smaller because handicapped persons are more evenly distributed. Whether it applies to other Perkins target groups is unknown, as there are no data on, e.g., numbers of single parents and homemakers in each state. Nevertheless, the failure to take account of the uneven distribution of the disadvantaged alone is significant, given that 22 percent of all Perkins aid is designated for that group.

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[113] The other main purpose of Perkins grants is, of course, to improve vocational programs, and so one might equally well ask why the interstate fund distribution formula does not contain factors that reflect the need for, or perhaps the capacity for, program improvement in each state. The absence of such factors is understandable, however, since "need for improvement" is an exceedingly difficult concept to make operational, much less to capture in a formula factor. The same cannot be said of the absence of indicators of the prevalence of special-need students.

One cannot cite unavailability of data to explain why the incidence of disadvantage is not reflected in the interstate formula. In addition to counts of poor persons, AFDC recipients, etc., an official indicator, long-used to dispense major sums of federal aid is also available--namely, the count of low-income pupils used to distribute federal aid under ECIA Chapter 1. It would be reasonable to consider using one of these factors to distribute at least aid for the disadvantaged, if not a larger share of vocational education aid, under Perkins.[114] Ideally, one might want to distribute aid for the disadvantaged according to the number of disadvantaged vocational enrollees in each state, but data on that variable, like data on vocational enrollment generally, are not now available.[115] Nevertheless, even using a general indicator of the concentration of low-income persons would produce a closer correspondence than we have today between federal aid and needs for vocational education of the disadvantaged. (Note: If the interstate distribution formula were altered to take account of the numbers of special-need persons in each state, it would be logical to make simultaneous changes in the rules for setting funds aside for the handicapped, the disadvantaged, and other target groups. Pertinent options are discussed below.)

Per-Capita Income and Other Adjustment Factors. The income factor in the present interstate formula has a distributional effect that many applaud--namely, it shifts the distribution of Perkins funds in favor of poorer states. The adjustment is designed so that states with the lowest per-capita incomes receive 20 percent more aid per (weighted) member of the population than states with average per-capita incomes, while states with the highest per-capita incomes receive 20 percent less. (Putting it differently, the lowest-income states receive 50 percent more aid per capita than the highest-income states.) The rationale for establishing this inverse relationship to income is that it reflects and partly compensates for interstate differences in fiscal capacity and reduces to some degree the interstate disparities that would otherwise exist in levels of support for vocational education.[116]

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[114] An argument for distributing more than 22 percent of Perkins funds on the basis of the number of low-income persons or students in each state is that at least some of the Perkins funds earmarked for other groups, particularly the 8.5 percent set aside for single parents and homemakers, are also intended mainly to serve persons who qualify as disadvantaged.

[115] States are required to produce data on both numbers of economically disadvantaged students and numbers of disadvantaged students served by vocational programs to operate the intrastate distribution formulas, but although these data are supposed to be based on uniform statewide definitions, there is no compatibility of definitions across states and hence no possibility of using the same figures for the interstate distribution.

One issue concerning the per-capita income adjustment is whether it compensates for disparities to an adequate or appropriate degree. The degree of equalization it produces is obviously not very large. If one considers that a typical state receives under Perkins a federal subsidy equal to perhaps 6 percent of state-local vocational education outlays and that the income factor causes this to vary from about 4.8 percent for high-income states to about 7.2 percent for low-income states, then it can be seen that the whole equalizing effect hinges on providing some states 107.2 percent rather than 104.8 percent of what they might have spent on their own.[117] This hardly constitutes a substantial redistribution of resources. It must be recognized, however, that the modesty of the redistributive effect is inherent in the low federal share of vocational education funding, compared to which the design of the formula is a second-order consideration. Even a radically equalizing (and presumably politically unacceptable) distribution of the existing sum of federal aid--say, allocating *all* Perkins funds to only the lowest-income states--would reduce by only a minor fraction the present interstate disparities in fiscal capacity and actual levels of support.

This is not to say that nothing can be done, or should be done, to make Perkins grants more equalizing. Eliminating the present upper and lower bounds (0.6 and 0.4) on the present adjustment factor would be a step in that direction; changing the mathematical form of the adjustment to make the aid-income relationship steeper would also strengthen the equalizing effect. A measure of realism is in order, however, as to what is feasible to accomplish. The scale of federal vocational aid is simply too small, relative to the size of the enterprise being aided, to have a substantial redistributive effect.

A different question raised about the present adjustment factor (specifically, in Benson and Hoachlander, 1981b) is whether, while compensating for disparities in fiscal capacity, it ignores equally important disparities in resource costs. The latter disparities are substantial.

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[116] It has also been suggested that allocating more aid to states with low per-capita incomes is a way of taking into account the unequal distribution of disadvantaged individuals among states--i.e., that it is a substitute for including indicators of the incidence of low income or disadvantage in the formula, as discussed above. However, this puts more of a burden on the modest adjustment for per-capita income than it can reasonably bear. Moreover, per-capita income is not particularly well correlated with the incidence of disadvantage, as some of the higher-income states, such as New York and California, have relatively high percentages of disadvantaged youth.

[117] This, of course, is highly simplified, as it takes into account neither the interstate variation in the ratio of federal to state-local support nor state fiscal responses to federal aid. Nevertheless, it does illustrate the limited potential magnitude of the formula's equalizing effect.

As an illustration, the average salary per teacher varies by a factor of almost 1.7 between the highest-paying and lowest-paying states.[118] The significance of this variation for federal fund allocation is that the same amount of aid per student buys different amounts of resources and services in different states. Ideally, one would want to take this into account in distributing aid, perhaps by adjusting the aid allocations with an appropriate cost index, so that each state receives (other things being equal) the same "real" aid per unit of need. The relevance of this to the income-based adjustment factor in the present formula is that there is a positive correlation between fiscal capacity, as measured by per-capita income, and the level of resource costs. The question arises, therefore, of whether adjusting for per-capita income without also taking into account the partially offsetting cost factor is appropriate. Conceivably, one could be giving extra vocational education aid to a state on the basis of its below-average per-capita income, while that state is actually able to support programs at above-average levels by virtue of its low resource costs.

As a practical matter, adjusting for interstate cost differentials is not immediately feasible. Such adjustments have often been called for by policy analysts, but no usable education cost indices have yet been constructed for states. The issue, therefore is whether it is better to adjust for fiscal capacity (per-capita income) without taking cost into account or not to adjust the population-based distribution at all. Considering that the present formula adjusts only fractionally for differences in fiscal capacity (i.e., it certainly does not give low-income states the same ability as high-income states to "afford" vocational education), the proposition that a cost factor is essential lacks force. Undoubtedly, some distortions occur because cost variations are not considered, but the overall effect is to produce a fiscal-capacity correction in the proper direction.

The Lower Bound on State Shares of Perkins Funds. Appended to the interstate fund distribution formula, as explained above, is the stipulation that each state shall receive at least one-half of one percent of the available Perkins funds. This is intended to, and clearly has, the effect of raising the allotments of the less populous states relative to those of all other states. The rough magnitude of the effect is also clear. Since each of the least populous states has, roughly, about one-fourth of one percent or less of the U.S. population, the effect of setting the minimum share at one-half of one percent is to give each state about twice as much aid as it would receive under the basic formula (as modified, of course, by the formula's per-capita income factor).

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[118] National Center for Education Statistics (1987). The comparison excludes Alaska and the District of Columbia. It should be noted that the observed interstate disparities in average teacher salaries reflect variations in teacher attributes (experience, training, etc.) as well as variation in costs. Nevertheless, the cost differentials are still substantial.

There is little to be said about the merits of such a constraint. The main argument that generally could be made for a lower bound on aid is one based on economies of scale--namely, that a state needs a certain minimum critical mass of resources to accomplishing anything useful. This argument is hard to apply to the case at hand, however, since most Perkins funds are in fact dispersed widely and in small amounts to LEAs and institutions. One may argue that each state, regardless of size, needs a certain minimum level of funding to administer federal aid effectively, but since the allowance for state administration is only 7 percent of the state grant, that alone does not explain why a lower bound should be applied to the entire state allotment. The one-half percent constraint has to be understood as a political arrangement--one that is common to many federal grant programs (see GAO, 1986 for descriptions of similar constraints attached to other grant formulas). Fortunately, it affects the distribution of only a small percentage of total Perkins funds.

The Percentage Set-Asides for the Handicapped and Disadvantaged

Setting aside certain portions of the Perkins appropriation for the handicapped and disadvantaged makes sense at the national level, but it is difficult to find a rationale for making the set-aside percentages uniform across states. Handicapped and disadvantaged persons do not make up the same fraction of each state's population or student body, and so it is not clear why they should receive the same shares of each state's Perkins grant. Earmarking a fixed 10 percent of each state's allotment for the handicapped is only moderately troubling, since interstate variations in the incidence of handicapping conditions are relatively minor. Earmarking a uniform 22 percent for the disadvantaged is more disturbing, however, because, as already noted, interstate disparities in the incidence of disadvantage are large. Consequently, the disadvantaged set-aside may provide several times as much support per disadvantaged person in some states as in others--a situation that seems inequitable and that certainly reflects a mismatch between federal aid and service needs.

The appropriate remedy depends on whether one takes the present interstate formula as given. Assuming that it will not be changed, the only way to respond to the unequal concentrations of handicapped and disadvantaged individuals in different states is by allowing the set-aside percentages to vary. In the case of the disadvantaged, this could be accomplished by linking the percentages to any of the previously mentioned indicators of prevalence of low income. For example, taking the ECIA Chapter 1 count of low-income pupils (POVCOUNT) as the indicator of incidence of disadvantage, one could establish each state's set-aside percentage (DISPCT) according to the formula, DISPCT = k·POVCOUNT, where the constant, k, is chosen to equate the aggregate national set-aside for the disadvantaged to a predetermined percentage of total Perkins funds. Such a formula would probably yield disadvantaged set-asides ranging from below 10 percent in states with the lowest poverty concentrations to 30 to 40 percent in states with the highest. Similarly, variable set-aside percentages for the handicapped could be based on the handicapped enrollment percentages presented each year in the Education Department's annual reports on implementation of the Education of the Handicapped Act. Such formulas would establish proportionality between the percentage of each state's students with special needs and the percentage of Perkins funds set aside to serve them.

The foregoing is clearly a second-best solution, however. It does improve the allocations of funds set aside for the handicapped and disadvantaged, but only at the expense of worsening the distributions of other types of Perkins grants. To see why, consider two states that have identical needs for vocational education, except that one has a much larger concentration of disadvantaged persons than the other. Suppose that a variable set-aside formula, such as the one described above, earmarks 35 percent of Perkins aid for the disadvantaged in State A but only 10 percent in State B. In terms of equity for the disadvantaged, this solution works well: federal aid is proportional to service needs. But consider what happens to the Perkins funds earmarked for other uses. Suppose, for simplicity, that the interstate differences in set-asides for the disadvantaged are offset entirely by differences in the funds available for program improvement activities under Title IIB. State A would be left with only 30 percent of its Perkins grant to spend on program improvement, as compared with 55 percent in State B--a result that is hard to justify, given the assumption that both states face identical needs for vocational education services.[119] In sum, the gain in equity for the disadvantaged is offset by decreased equity in the allocations of other Perkins funds.

An alternative that avoids these undesirable allocative effects has already been described. It is to apply the set-aside percentages at the national level, earmarking certain percentages of the total Perkins appropriation for the disadvantaged, the handicapped, and perhaps other groups, and then to distribute each of those pots of money among the states according to appropriate indicators. This approach, unlike the variable set-aside method, does not entail supporting the disadvantaged or handicapped at the expense of other groups or activities. A state with a large concentration of the disadvantaged would receive extra federal funds based on its low-income population; it would not have to devote an above-average proportion of a fixed allotment to disadvantaged students.

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[119] I.e., 35 percent of state A's grant is allocated to the disadvantaged, as compared with the 22 percent allocated under the current Act, which means that a 13-percentage-point share of the 43-percent earmarked for Title IIB must be reallocated to make up the difference, leaving only 30 percent for program improvement. In the case of State B, only 10 percent of the state grant is earmarked for the disadvantaged, leaving an extra 12 percentage points to be shifted to Title IIB programs, which raises the total allocation for program improvement from 43 to 55 percent.

Note that distributing aid in the manner just proposed implies a basic change in the structure of the fund distribution mechanism, not merely changes in formulas. The present structure prescribes a formula-based distribution to states followed by disaggregation within each state into (fixed) fractions for different target groups and uses. Under the proposed alternative, the sequence would be reversed. Perkins funds would first be apportioned at the national level into allotments for the various target groups, and each such allotment would then be distributed by formula among the states. Moreover, instead of a single interstate distribution formula there would be multiple formulas (one for each pot of funds), each based on factors appropriate to the target group or purpose in question.

Net Effects Versus Nominal Effects of the Interstate Distribution

There is a tendency in evaluating federal aid formulas to focus on the distribution of the federal dollars themselves, forgetting that the purpose of aid is to generate additional outlays for the designated programs and beneficiaries--in this case, supplemental services for the handicapped and disadvantaged. When programs are financed with state and local as well as federal funds, however, the effects of federal aid on services depend not only on how the federal money is distributed but also on how the recipients respond. If some states use federal aid additively, while others mainly substitute federal for nonfederal dollars, the distribution of the *net* effects of federal aid may not resemble the gross distribution of the federal grants.

It would be exceedingly difficult to estimate accurately the degree to which federal aid has translated into additional program outlays in each state. Both the data requirements and the analytical requirements for such estimation are too demanding. Nevertheless, there is reason to expect federal aid to be differentially additive to nonfederal spending in different states. As explained in the earlier chapters on excess costs and supplanting, the degree of additivity depends on, among other things, the level of support that grantees would have provided for the service in question in the absence of federal funding. In the case of supplemental services for special-need students, particularly the disadvantaged, these levels of support are believed to be highly variable among states, with some states doing little on their own to provide extra services to target-group students and some doing a great deal. This means that opportunities to substitute federal for nonfederal funds are unevenly distributed among states, and it is likely that actual substitution rates vary correspondingly. The distribution of federal dollars probably gives a misleading impression, therefore, of the interstate distribution of incremental services generated by Perkins grants.

It is noteworthy in this regard that very little in the federal legal framework, as currently interpreted, poses a significant barrier to states' substituting federal funds for nonfederal resources that would otherwise have gone to support the handicapped and disadvantaged. The supplemental services and excess cost requirements, as explained in Chapter 4, inhibit substitution only to a limited degree and only under certain circumstances; they are ineffective in cases where states would have incurred substantial excess costs for the handicapped and disadvantaged on their own. The Perkins nonsupplanting rule, as explained in Chapter 6, has not been interpreted in a way that would prevent states from displacing their own support for special-need students with federal funds. The maintenance of effort requirement in the Perkins Act (P.L. 98-524, Sec. 503) pertains only to spending for vocational education in the aggregate and therefore does not impede shifts of state or local vocational education funds away from the handicapped or disadvantaged. Consequently, there are no guarantees that federal aid for vocational education of the handicapped and disadvantaged will translate, even approximately, into increments in statewide spending for the designated target groups. Under these circumstances, any resemblance between the net and nominal effects of federal grants on interstate distributions of outlays for special-need students is likely to be coincidental.

ISSUES CONCERNING THE INTRASTATE DISTRIBUTION

The present federal formulas for distributing grants for the handicapped and disadvantaged within states are new under the Perkins Act and apparently no evaluations have yet been done of either their designs or their actual effects. Some of the key design questions are the standard questions one would ask about any federal fund distribution formula: Are the formula factors consistent with the purposes of the grants? Do they reflect needs for the services in question? Does the formula take account of relevant differences in circumstances? Does it have an appropriate mathematical form? Another, more specialized issue has already been raised: is the practice of dividing federal aid into "pools" for different classes of recipients before applying the formula consistent with Congressional intent, and what are its effects on the distributional outcomes? Another special issue concerns potential side effects--in particular, the influence of the intrastate formulas on the numbers and types of students to be served. Finally, a troubling question about the net effects of the formulas is saved for last to avoid casting a pall over the rest of the discussion: given that the formulas apply to only 32 percent of Perkins funds and that the distribution of the other 68 percent is at state discretion, what real influence can the formulas exert on the intrastate distribution of federal aid?

Formula Factors and Mathematical Forms

The formulas for distributing aid for the handicapped and disadvantaged each contain two factors, which are equally weighted and combined additively: (1) the number of economically disadvantaged students enrolled by a recipient and (2) the number of handicapped or disadvantaged students, as the case may be, served in vocational education by the recipient in the previous year. This discussion focuses, first, on the individual formula factors; second, on the formula's mathematical form; third, on whether there are other factors, not now included in the formula, that ought to play a role; and finally, on the special issue of whether it makes sense to distribute substantial numbers of very small grants.

The Number of Economically Disadvantaged Enrollees. Although this factor appears in both formulas, the rationale for its inclusion is not self-evident. It might seem, initially, that the number of economically disadvantaged enrollees is a highly appropriate factor to include in the formula for allocating disadvantaged set-aside funds until one considers that a more pertinent indicator of need, the number of disadvantaged students *served in vocational education*, also appears in the same formula. One may well ask, therefore, what function the count of economically disadvantaged enrollees serves. In the case of the formula for allocating handicapped set-aside funds, the question is why the number of economically disadvantaged persons is relevant at all. What does it have to do with needs of the handicapped in vocational education?

The answer to both questions (based on a review of the legislative history) seems to be that the number of economically disadvantaged enrollees was incorporated into these formulas not as a measure of need for services but rather as a rough proxy for fiscal capacity and/or grantees' needs for outside financial assistance. This interpretation is based on language in the report on the Senate bill that preceded the Perkins Act. Under that bill, there was to be a single formula for distributing funds for both handicapped and disadvantaged students, and one factor in the formula was to be the number of economically disadvantaged individuals enrolled. The purpose of the factor, according to the Committee's report, was to take into account "the relatively higher burden facing recipients that serve large numbers of the economically disadvantaged."[120] The House-Senate conference committee split the formula into separate formulas for the handicapped and the disadvantaged but retained the economic-disadvantage factor in both, presumably to serve the same purpose. Thus, the factor should be viewed not as a redundant or extraneous indicator of need but rather as analogous to the per-capita income factor in the interstate formula. Unfortunately, the number of economically disadvantaged persons is not a very good proxy for fiscal capacity, as it correlates poorly (at least in some states) with such capacity measures as per-capita income and the property tax base. It is probably all that is available, however, given the lack of usable data, comparably defined across states, on local income or wealth.[121]

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[120] Report to accompany S.2341, Senate Report No. 98-507, 98th Congress, 2nd Session, June 7, 1984, pp. 17.

Whether including the number of economically disadvantaged enrollees in the formulas improves or detracts from the distributional outcomes is something that can only be established empirically. It should be a straightforward task to determine for selected states, using existing district-level and institutional-level data on tax bases, enrollment composition, etc., how the factor's inclusion alters relationships between federal aid and such variables as local wealth, local spending, and concentrations of special-need students. Conducting such empirical analyses is essential to reaching definitive conclusions about the roles of particular factors or, more generally, about the formulas' overall performance.

Aside from whether the economic-disadvantage factor is relevant and belongs in the formulas, there is reason to be concerned about the degree to which it is manipulable by the states. As explained in Chapter 3, the Perkins Act prescribes no standard definition of "economically disadvantaged." Instead, each state is free to choose among multiple indicators, or combinations of indicators, of the incidence of low income or poverty. What are the implications for the distributions of Perkins funds? A state can try out the various criteria allowed by the federal rules--eligibility for free school lunch, eligibility for AFDC, receipt of a Pell grant, etc.--determine what distributions would result from choosing different criteria, and select the set of outcomes it prefers. Suppose, for instance, that in a particular state AFDC eligibility is concentrated in large urban school districts, while eligibility for free school lunches is more widely dispersed. If state officials want to favor the cities, they can choose the former as the criterion of economic disadvantage; if they want to favor rural areas, they can pick the latter. In this respect, although the formula is federally prescribed, control over the definition of economic disadvantage gives the state considerable power to shape the results.

The Numbers of Handicapped and Disadvantaged Students Served. The second factor in each statutory formula, the number of handicapped students or the number of disadvantaged students served in vocational education, raises no issue of relevance. These variables--if satisfactorily quantified--would provide direct indicators of the level of demand for vocational education services for special-need students in each LEA and postsecondary institution. The principal issues concerning them are, first, whether proper quantification of numbers of students served is feasible and, second, the potential incentive effects, or side effects, of basing allocations of federal funds on counts of students served.

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[121] All states have data on local tax bases, but each state has its own tax-base definitions. Hence, although it is common to use the per-pupil or per-capita tax base as an allocation factor in individual-state formulas, it is infeasible to do so in a formula that has to be applied nationally. Per-capita income data are not available for local school districts, except insofar as they are generated by a special mapping of census tract data from the decennial censuses onto school district boundaries. The reliability of the mapped data are questionable for small districts. No fiscal capacity data of any kind are available for postsecondary institutions, and it is unclear that the notion of fiscal capacity applies to such units.

As explained in Chapter 3, there are no federally prescribed or nationally uniform definitions of handicapped and disadvantaged vocational students. The meanings of "handicapped," "disadvantaged," and "vocational student" are all elastic to varying degrees, and decisions as to which students and how many students to include in these categories are subject to a great deal of state and local discretion. In particular, two aspects of definitional elasticity that affect the distribution of funds are that (1) there are no federal guidelines as to who should count as a "student served" in vocational education, and (2) great latitude is left to states and even to the parties with the greatest self-interest in the results--the LEAs and postsecondary institutions--to decide how many of their vocational students qualify as handicapped or disadvantaged under the Act.

Two specific problems with counts of "students served" are that no threshold is specified as to the amount or kind of vocational coursework a student must take to be counted and there is no requirement that counts be weighted to reflect the differing amounts of vocational services consumed by different students. The significance of the former is that "students served" may be interpreted so broadly as to include anyone taking even a single vocational course. The significance of the latter is that such minimally involved students count, for the purpose of distributing federal funds, just as much as students enrolled in serious programs of occupational training. Consequently, the extent of participation in vocational education is likely to be exaggerated, and the formula is likely to distribute too much aid to LEAs and institutions that serve marginal vocational students and too little to those with more serious occupational training programs.

Recognizing this problem, the Senate committee on Labor and Human Resources stipulated in the report on its 1984 reauthorization bill that states should adjust their student counts to represent numbers of "full-time equivalent students enrolled on an annualized basis."[122] This, however, is a statement of Congressional intent that OVAE has chosen to ignore, and nothing about either FTE enrollment or annualized enrollment appears in the pertinent regulations. The lack of such a weighting requirement is a weakness in the present system. It is difficult to dispute that if the objective is to distribute federal aid in proportion to local needs for vocational education services for handicapped and disadvantaged students, a count of FTE students is preferable to an unweighted count.

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[122] Report to accompany S.2341, Senate Report No. 98-507, 98th Congress, 2nd Session, June 7, 1984, pp. 16-17. Apart from the problem that some students take more vocational education courses than others, the Committee was concerned about counting as full-time students persons who enroll only in short-duration vocational courses. This is the reason for stipulating that FTE students should be counted on an annualized basis.

That the definitions of "handicapped" and, especially, "disadvantaged" are under state and local control raises several questions about the functioning of the formula and about the degree to which intrastate fund distributions are likely to reflect federal priorities. States have the authority, first, to select particular measures of economic disadvantage, as already discussed; second, to specify criteria and cut-off points for identifying academically disadvantaged students; and third, to set guidelines for local diagnostic and identification procedures. Through that authority, they can exert considerable influence on the intrastate distributions of federal funds. For instance, by broadening or narrowing the criteria of academic disadvantage, a state can adjust the degree to which relative academic performance, as opposed to the incidence of poverty, controls the allocations. It could, say, pick the combination of academic and economic criteria that most favors suburban school systems. This ability to manipulate *all* the formula factors gives the state broad power to shape the nominally federally prescribed distributions to its liking.

Moreover, the power to manipulate the counts of handicapped and disadvantaged students served in vocational education does not stop with the states. It extends to the individual LEAs and postsecondary institutions, which, as the ultimate grantees, have the most direct self-interest in the results. Recall, in particular, that part of the current official definition of a handicapped or disadvantaged student under the Act is that the student must require special assistance or special services to succeed in vocational education. Deciding which vocational students fit that description is inherently a local function, and the power to decide gives grantees considerable control over the numbers of students who qualify as handicapped or disadvantaged for the purpose of the formula count.

Unfortunately, almost nothing seems to be known about how grantees actually behave in this respect. One might think that maximizing federal aid would be the prime consideration, leading LEAs and institutions to count as many vocational students as possible as handicapped or disadvantaged; but there are also pressures in the opposite direction. As one can tell from the "turn-back" phenomenon--refusals by some grantees' to accept all or some of the aid to which they are entitled--receiving earmarked aid, especially for the disadvantaged, is not considered an unmixed blessing. Specifically, it is possible that the service obligations incurred under Sec. 204(c) of the Act (see Chapter 7) could outweigh the benefits of additional federal aid, inducing some grantees to hold down rather than maximize their counts of students served. Whatever the facts may be, the key point remains: basing a funding formula on factors that the grantees themselves can manipulate is unsound policy. It can create unanticipated and unintended incentives and have perverse effects on student selection and targeting of funds.

A specific point needing clarification is whether Congress really intended the intrastate formulas to depend on definitions that involve judgments by grantees as to whether students "require special services or assistance to succeed." A readily available alternative is to specify that "handicapped students served" refers, for formula purposes, to the numbers of enrollees in vocational programs who have handicapping conditions, and "disadvantaged students served" refers to the number of enrollees who have economic or academic disadvantages, without regard to judgments about such students' needs for special services. This would not eliminate subjectivity and manipulability entirely but it would reduce their scope.

Mathematical Form. Assuming that the economic-disadvantage factor in the formulas is correctly interpreted as a proxy for fiscal capacity, a question arises as to the appropriateness of the present form of the aid allocation equations. The additive form yields a seemingly perverse result: an LEA that serves very few handicapped or disadvantaged students in vocational education but enrolls a considerable number of economically disadvantaged individuals in its schools (in nonvocational programs) could receive a substantial allocation of aid based on the 50 percent of funds distributed on the basis of economic disadvantage. Such an LEA would receive a disproportionately high allocation relative to its actual service levels and outlays for the target group. This is a result of applying each formula factor separately to its own half of the available funds.

An alternative approach, perhaps better suited to the combination of a need-for-service factor (the number of handicapped or disadvantaged students served in vocational education) and a fiscal-capacity proxy, is to treat the latter as an adjustment to the need factor, in much the same way as a per-capita income factor is treated as an adjustment to the population factor in the interstate formula. The result would be a distribution in proportion to the level of services, but adjusted up or down so as to give relatively greater aid per student served to grantees with more serious fiscal burdens, as represented (crudely) by concentrations of economically disadvantaged students.

Relevant Factors Missing from the Formula. It is important in assessing a funding formula to consider not only the factors included but also the potentially relevant factors left out. In the present case, the legislative history makes it easy to identify pertinent omitted factors. As explained earlier, the Congress did not prescribe intrastate formulas prior to the Perkins Act but instead specified factors that states were supposed to take into account in designing formulas of their own. Among the factors so specified immediately prior to the present Act were (a) economic, social, and demographic factors related to needs for vocational education, (b) fiscal capacity, (c) concentration of low-income families, (d) concentration of special-need students, (e) location in economically depressed or high-unemployment areas, and (f) presence of new programs designed to meet new occupational needs. All were either to be treated as "most important" or "given priority" in distributing funds. Obviously, there are only two factors in the current formulas. What happened to the rest? How is it that Congress considered them important enough prior to 1984 to insist that states take them into account but omitted them in writing formulas of its own? What are the consequences of leaving them out?

Consider the factors one by one. The two that do appear explicitly in the formula are concentration of special-need students and concentration of low-income families (the latter represented by the number of economically disadvantaged enrollees). There is no fiscal capacity factor as such, but fiscal capacity is said to be represented by the economic-disadvantage factor. However, this imposes a dual role on the factor that it is not suited to fill, especially considering that the fiscal capacities of jurisdictions, conventionally measured, often do not correlate well with the numbers of low-income local residents.

A likely practical reason for the omission of a real fiscal capacity factor is that there is no per-capita income or other capacity variable for which satisfactory national data exist. Usable per-capita income data are generally not available for school districts, and data on the local property tax base, the most commonly used fiscal capacity indicator in school finance, are not universally available and not consistently defined across states. Moreover, a problem that transcends data availability is that, for postsecondary recipients, it is not clear what fiscal capacity means or that it has any meaning at all.

In principle, fiscal capacity could be taken into account in the intrastate distribution by appending to the formula an adjustment factor similar to the per-capita income factor in the present interstate formula. To do this, however, it would be necessary either to overcome the aforementioned data problem, e.g., by developing improved income data from the Census mapping, or to allow states to insert their own fiscal capacity variables into the formula. In any event, the fiscal capacity adjustment would have to be limited to the distribution of funds among LEAs, unless and until someone develops a valid and practical measure of the fiscal capacity, or fiscal condition, of postsecondary institutions.

That formulas should take into account "economic, social, and demographic factors related to needs for vocational education" was a vague stricture before Perkins, and it remains vague today. The demographic factors, one might say, are already represented by the student counts in the present formulas. An interpretation of what it might mean to include economic factors (other than fiscal capacity) is that fund allocations should reflect what might be termed the "external demand" for vocational education--not the number of students enrolled in vocational programs but rather the number of trainees required to fill projected job openings. Including such a factor is attractive conceptually, as the needs of state and local economies have never been taken into account, other than rhetorically, in apportioning vocational education resources. But whether or how this could be accomplished is uncertain, making it, at best, an idea for further exploration.

The notion of taking into account whether grantees are located in economically depressed or high-unemployment areas survives under the Perkins Act only in the proviso that more federal aid, in the aggregate, must be allocated to such areas than to other areas in each state. Why this factor is absent from the formulas is unclear, since lack of data is not a severe problem. Existing county-level data on personal income and unemployment could be used either (1) to assign some eligible recipients to economically depressed or high-unemployment categories, which could then be given extra weight in the formula allocations, or (2) as separate formula factors, which could be assigned weights along with the counts of students served. Such economic indicators are used as factors in other federal aid programs (outside education), and it would be feasible to use them in the vocational education program as well.

The final factor mentioned in the old law, the presence of "new programs designed to meet new occupational needs," seems to have been discredited as a result of experience prior to 1984. Grantees with new programs were to have been "given priority" in distributing funds, but BOAE never succeeded in defining a workable new-program criterion (Long and Silverstein, 1981b). Also, analysts pointed out that favoring grantees with new programs would probably have had perverse distributional consequences, as such grantees were likely to be among the fiscally better-off. Whether for these or other reasons, Congress dropped the idea of favoring such recipients and chose instead to encourage innovation through separate program improvement grants.

In sum, of the factors that Congress considered important prior to Perkins but that do not appear in the present formulas, two seem to merit further consideration. One, a fiscal capacity adjustment, would help to make the formula more equitable, but the feasibility of such an adjustment is contingent on either improved national data or the use of state-specific data. The other, an adjustment for economically depressed or high-unemployment areas, is feasible now. As will become apparent below, however, making these (or any) formula adjustments may be of relatively minor consequence, given the abilities of states, under the present rules, to reshape the federally prescribed distributions to their own liking.

The Issue of Small Grants. Because no constraints have been imposed on aid amounts computed under the intrastate distribution formulas, there are no lower limits to the size of grants to individual LEAs or postsecondary institutions. Many LEAs in the United States are very small, and some enroll only tiny numbers of economically disadvantaged students and special-need students served in vocational education. Such LEAs are entitled under the formulas to grants of only a few thousand dollars, or sometimes only a few hundred dollars, in handicapped or disadvantaged set-aside funds. The question arises of whether such small grants make sense. It is not evident that anything of more than marginal value to the target students can be bought with such small amounts of aid (e.g., the grantees may be able to buy materials or small items of equipment) or that such minuscule grants justify the costs incurred for local and state administration.

It is notable in this regard that the Perkins Act lacks the type of "de minimus" rule found in other major federal education grant programs. Under ECIA Chapter 1, it is generally required that a grantee have at least 10 qualifying low-income students to be eligible for a grant--which means it must be eligible for a grant of at least about $5,000 (ESEA Title I, Sec. 111(b)). Under a provision of the Education of the Handicapped Act (Sec. 611(c)(4)), an LEA receives a grant only if its formula-based entitlement is at least $7,500. In contrast, the *median* Perkins grants to LEAs under the disadvantaged and handicapped set-asides are about $4,000 and $3,000, respectively, and many grants are in the $1,000 to $2,000 range (unpublished NAVE data). Thus, a nonnegligible fraction of a relatively small pool of funds is dissipated in very small and probably unproductive amounts.

The option deserves consideration of bounding the Perkins set-aside grants from below, as in the other federal programs. This could be done by stipulating either minimum grant amounts or minimum numbers of special-need vocational enrollees that an LEA or institution must have to qualify for aid. It might also be considered desirable, in conjunction with setting such bounds, to make alternative arrangements for serving students of LEAs and institutions deemed too small to have grants of their own. This could be accomplished by setting up consortia of the smaller units or assigning the responsibility to intermediate (e.g., county) authorities.[123]

Fund "Pools" and the Integrity of the Formula

As described earlier in this chapter, many states have added to the formula allocation process a procedure for dividing the state's allotments of aid for the handicapped and disadvantaged into separate "pools" of funds for different classes of recipients. Consequently, the formulas are used only to apportion funds among the grantees within a class rather than among all eligible recipients simultaneously, and the apportionment among classes is unregulated and wholly under state control. This arrangement raises a series of concerns: Is it legal? Are there legitimate practical or policy reasons for doing it? How does it, or might it, affect the distributions and targeting of funds? Should it be incorporated into the law, regulated, modified, or banned entirely?

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[123] Under the Education of the Handicapped Act, states are responsible for ensuring that appropriate services are delivered to handicapped enrollees of LEAs too small to qualify for aid. This applies, of course, to handicapped secondary school students enrolled in vocational programs.

The legality of establishing separate fund pools will have to be resolved elsewhere, as the author lacks the qualifications to render a legal opinion. Nevertheless, several pertinent points may be noted. First, there is no doubt that the procedure is neither prescribed nor authorized by law or regulation. According to an OVAE official interviewed for this study, a formal interpretation that would have authorized fund pools was drafted and proposed but rejected during the rule-making process. Second, the division into pools unquestionably alters the distribution of federal funds and has the potential to alter it drastically (see below). Third, no such division is logically necessary to implement the formulas; the fund distribution process set forth in the Act is complete and unambiguous as written. Fourth, although OVAE officials cite as precedent and justification the similar fund-pool arrangements that were authorized by regulation under prior law, these precedents seem inapplicable, as they pertain to what states were allowed to do in designing formulas of their own, not to what they are allowed or required to do in implementing a statutory federal formula. One current Education Department official interviewed for this study suggested (either disingenuously or cynically) that separate fund pools are within the law because they are not explicitly prohibited. One could, of course, say the same of (hypothetical) state practices of doubling the federally prescribed entitlements of small school districts or halving those of urban districts--neither of which would alter the statutory allocations more drastically than the fund-pool procedure that OVAE/ED allows.

That dividing a state's aid allotment into subpools can alter the aid distribution radically is indisputable. Under the formula prescribed by Congress, each eligible recipient was to have received aid proportionate to an equal-weighted sum of its share of the state's economically disadvantaged enrollees and its share of the number of handicapped or disadvantaged students served in vocational education. The division into pools eliminates that proportionality by allowing the ratio of aid entitlements to weighted student counts to vary among classes of recipients. The grantees in one class may receive several times the aid they would have received under a strictly proportional allocation; those in another class may receive much less than their proportional shares. According to a NAVE-commissioned survey, such disproportionalities do, in fact, exist. In some states, postsecondary institutions in some states receive several times as much aid relative to enrollment as do LEAs; in other states, agencies that operate area vocational schools receive significantly more aid than regular LEAs, relative to their respective student counts.[124] These disparities would not exist if the formulas were applied to all eligible recipients simultaneously, as called for in the statute.

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[124] These findings are reported in the NAVE Second Interim Report (1988). The survey was conducted for NAVE by the National Center for Education Statistics (NCES), and the state-by-state data are reported in NCES (1989).

The other side of the coin is that there is a good case to be made for distributing funds for secondary and postsecondary institutions separately rather than attempting to allocate them according to a single, undifferentiated formula. The strongest argument is a practical one: there appear to be no methods of counting handicapped or disadvantaged vocational enrollees that apply uniformly to both levels. Economic disadvantage, for example, is likely to be defined at the secondary level in terms of AFDC or free school lunch, but at the postsecondary level in terms of receiving Pell grants. Counts based on these divergent definitions are not comparable, and the idea of mixing data on both and applying a single formula to the resulting porridge seems unacceptable. Similarly, neither identical measures of academic disadvantage nor identical definitions of handicapping conditions are readily applied to secondary and postsecondary students. Therefore, there are likely to be anomalies and inequities in any distribution that does not differentiate between secondary and postsecondary vocational education.

Moreover, even if an undifferentiated distribution among both LEAs and postsecondary institutions were feasible, it might not be desirable. The average postsecondary vocational student probably consumes more services than the average secondary vocational student, and the unit costs of services are probably greater at the postsecondary than at the secondary level. On these grounds alone, there is justification for some form of secondary-postsecondary differentiation (although not necessarily for separate formula distributions) in allocating funds among individual grantees.[125]

It is reasonable, therefore, to divide federal aid into secondary and postsecondary shares before distributing funds among individual grantees. It does not follow, however, that this division should be outside the legal framework, that there should be divisions other than between secondary and postsecondary, or that states should be able to put whatever shares of funds they choose into the secondary and postsecondary pools. In other words, that there is reason to distribute funds to secondary and postsecondary grantees separately does not imply that the present ad hoc process is acceptable.

The problem with an unregulated process is that it invites abuses. Establishing multiple fund pools is a means by which states may favor one class of recipients over another, even where there is no compelling reason for differentiated treatment. By creating enough pools, a state could manage to favor, e.g., urban LEAs over rural ones, large LEAs over small ones, or public over private postsecondary institutions. The potential for abuse is magnified by the absence of any limits on the percentages of Perkins funds that states could earmark for different classes of recipients. Only 20 percent of a state's disadvantaged vocational students might be enrolled at the postsecondary level, for example, yet the state would apparently be free, as far as OVAE is concerned, to put 50 or perhaps even 90 percent of its disadvantaged set-aside funds into the postsecondary pool. Conceivably, a state could choose to exclude a class of recipients entirely from one or another of the formula distributions, although there are indications that at that point OVAE might draw the line.[126] Nothing in the current system ensures equitable or proportionate treatment across state-defined categories of recipients.

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[125] Both differences in course enrollments per vocational student and differences in unit costs could be handled by assigning greater weight in the formula to postsecondary than to secondary students. This could be accomplished without setting up separate formulas. Note also that secondary-postsecondary differences in course enrollments per student would be taken into account automatically if the formula factors were measured in terms of FTE enrollments.

How can these problems be addressed? What seems to be needed is a distribution mechanism that allows for separate secondary and postsecondary distributions while avoiding the difficulties inherent in the present improvised system. Based on the foregoing discussion, the following would seem to be desirable characteristics of such a mechanism: First, it should be defined along with the rest of the distribution process--i.e., by statute (or at least by regulation). Second, it should distinguish between LEAs and postsecondary institutions, but not among other subclasses of recipients unless Congress specifically determines that certain types of providers (e.g., area vocational schools) are to be favored. Third, the secondary-postsecondary split of Perkins funds should either be federally prescribed or determined by states subject to federal guidelines.

There are several ways to structure such a system. The approach that deviates least from current practice would be to have each state divide its handicapped and disadvantaged set-aside funds into separate secondary and postsecondary pools according to a federally specified rule before applying the intrastate distribution formulas. The rule might be, for example, that funds must be divided between the two levels in proportion to their respective FTE vocational enrollments. Other possibilities include dividing funds according to weighted enrollment in a way that adjusts for cost differences between levels; dividing them in proportion to vocational education expenditure at each level (assuming that expenditure data could be produced); and dividing aid according to numbers of FTE handicapped and disadvantaged *vocational* enrollees at the two levels (after the necessary vocational enrollment data were developed). The federal government could also limit its role to establishing guidelines

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[126] In material accompanying the Perkins regulations, ED addressed the question of whether a state might channel all its Title IIA funds to postsecondary institutions. ED said no, citing the intent of Congress to provide opportunities for special-need individuals at both secondary and postsecondary levels (50 FR 33300). The crucial question, however, is not whether a state can allocate literally zero funds to one level or another but whether it can skew the distribution so sharply that one sector receives only a token allocation. In the absence of any limits on relative shares, or any guidelines on how the sizes of secondary and postsecondary pools should be determined, it is not clear that the latter would be precluded.

(rather than prescribing a formula), allowing each state to take into account differences in costs, course enrollments, and other relevant factors in determining its own secondary-postsecondary division of funds. The latter is risky, however, as without rigorous federal oversight it could easily degenerate into the type of ad hoc arrangement we have now.

The whole problem of dividing funds between the secondary and postsecondary sectors could be avoided, of course, by making the division at the federal level before apportioning Perkins funds among the states. Each state would then receive separate federal grants for secondary and postsecondary vocational programs. This has the advantage that both the interstate distribution formulas and the percentage set-asides for different purposes and target groups could be differentiated by level, taking the disparate service offerings of LEAs and postsecondary institutions into account.

Almost any of the foregoing alternatives would seem preferable to the ad hoc arrangements now in place, as each would bring explicit equity and targeting considerations to bear on a part of the fund allocation process that now takes place, as it were, in the shadows. Reforming the Perkins grant distribution system in this respect should make the fund allocations more equitable, better matched to educational needs, and more consistent with Congressional intent.

Net Effects: Are the Intrastate Distribution Formulas of Any Consequence?

It may seem frivolous to ask whether the formulas are of any consequence, since they control the intrastate distributions of the 10 and 22 percent Perkins set-asides for the handicapped and disadvantaged; but the question takes on meaning when one considers that (a) states have full discretion to distribute the remaining 68 percent of Perkins grants, and (b) the federal government exerts no control over the distributions of nonfederal funds (not even required matching funds) for vocational education of the handicapped and disadvantaged. By taking the formula-based allocations into account when distributing other federal and nonfederal vocational funds, states can easily reshape the federally prescribed distributions to their liking, even to the extent of completely nullifying their effects.

To see how easily the prescribed formulas can be rendered ineffectual, consider an example in which a state distributes federal vocational education aid among three districts. Suppose that the state receives a total of $2,400 in Perkins funds, of which $1,000 is earmarked for the handicapped and disadvantaged and, therefore, for distribution by formula. Suppose that the state's own preference would be to distribute all Perkins funds equally, $800 per district, but that the federal formula mandates that the $1,000 in handicapped and disadvantaged set-aside funds be distributed in amounts of $100, $300, and $600, respectively, to districts A, B, and C. Obviously, the state can achieve its preferred outcome simply by apportioning the remaining $1,400, over which it has full control, to A, B, and C in amounts of $700, $500, and $200, respectively, leaving each district with a total of $800 in federal funds. The net effect is that the state's preferences prevail, exactly as if there were no federal formula. Note, moreover, that even if the state were somehow deterred from so blatantly skewing the distribution of nonformula Perkins funds against grantees favored by the federal formula, it could still achieve essentially the same thing by appropriately reallocating state matching funds or other types of state aid (not necessarily vocational) among LEAs.[127]

It appears, therefore, that the Congress, by prescribing in law how 32 percent of Perkins funds should be distributed, has asserted only nominal control over the intrastate distribution of total Perkins funds (and no control over the intrastate distribution of federal and nonfederal vocational education funds combined). What it has accomplished, at best, is to establish certain minimum levels of funding for supplemental services for the handicapped and disadvantaged in each LEA or postsecondary institution. To accomplish broader distributional objectives, the federal government would have to constrain, if not prescribe, not only the distributions of *all* Perkins grants and matching funds but also the distributions of state aid to LEAs and postsecondary institutions.

It is noteworthy in this regard that the Perkins Act contains no explicit prohibitions against distributing either nonformula Perkins funds or state funds in ways that offset the formula distributions, or that "penalize" grantees on the basis of the aid they receive under the formulas. Conceivably, overt skewing of state aid allocations to offset the formula-based distributions of Perkins set-aside funds would be considered illegal supplanting, even under the weak OVAE/ED interpretation of the supplement, not supplant requirement (see Chapter 6).[128]

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[127] It is not the handicapped and disadvantaged who would be the direct losers from this offsetting behavior. Grantees would still be obliged to spend all funds received under the statutory formulas (plus matching funds) on supplemental services for the handicapped and disadvantaged. The losses would take the form of reductions in the amounts of other Perkins grants (e.g., program improvement grants) and/or state matching funds channeled to LEAs that, from the state's point of view, are favored excessively by the federal formulas. The net effect of the formulas, therefore, might be partly to shift resources from other uses to services for the handicapped and disadvantaged. Indirectly, however, offsetting behavior would probably affect the handicapped and disadvantaged adversely as well, in that grantees that lose other funding in consequence of receiving aid for special-need students will probably be less inclined to devote resources of their own to such students than they would have been otherwise.

[128] Long and Silverstein (1981b) report on a case in which BOAE barred, as supplanting, a state plan for distributing general-purpose aid to community colleges under which the amount of state aid going to each college would have been reduced by the amount of federal aid received. This suggests that a state cannot *overtly* divert its own funds away from grantees on the basis of their receipts of Perkins funds, but of course it does not preclude accomplishing the same thing in a more subtle manner.

9. THE SET OF TARGETING PROVISIONS AS A WHOLE

This final short chapter on Perkins grants for the handicapped and disadvantaged brings together findings from the preceding chapters and adds certain general findings concerning the set of resource allocation and targeting provisions as a whole. Its purpose is to offer a broader perspective on the shortcomings of the existing targeting mechanism than can be obtained by focusing on one provision at a time. The findings laid out below pertain, first, to the overall effectiveness of the present resource allocation and targeting provisions; second, to certain cross-cutting issues and aspects of program design; and third, to the roles that Congress and OVAE/ED have played in shaping the present framework and could play in improving it in the future.

OVERALL EFFECTIVENESS OF THE PRESENT TARGETING PROVISIONS

The reason that effective targeting of aid is such an important consideration perhaps bears repeating: Proper allocation and targeting of Perkins grants, in the specific fiscally additive sense emphasized in this report, is a prerequisite for enhancing opportunities for special-need students. Perkins grants can benefit handicapped and disadvantaged vocational enrollees only if and to the extent that they add to the resources and services that such students would otherwise have received. The portions of Perkins grants that substitute for, rather than add to, state, local, or other federal funds may help the recipients by relieving their fiscal burdens, but they are lost to the intended beneficiaries. It is for this reason that the adequacy of the Perkins targeting provisions deserves the attention paid to it in this report.

The list of fiscal and resource allocation requirements associated with Perkins grants for the handicapped and disadvantaged seems formidable until one begins to look in detail at how the various requirements have been interpreted and implemented. It then becomes clear that there is much less to the existing set of rules than meets the eye. In principle, the types of provisions now present in the statute--excess cost, matching, maintenance of effort, nonsupplanting, etc.--should do a great deal to ensure that federal funds are used as intended. Ideally, these provisions would be capable of (a) generating resource differentials in favor of special-need students amounting to a multiple of the volume of federal aid, and (b) ensuring that a reasonably high fraction (though by no means 100 percent) of federal aid adds to the services that would otherwise have been provided for such students. But this potential cannot be realized under the present official formulations and interpretations of the rules, which have rendered some key provisions inoperative and limited or diluted the effects of others. Consequently, much of the money that Congress appropriates each year, nominally to augment, expand, and enrich vocational education for special-need students, formula, and (c) establishing a minimum grant size that would eliminate many of the very small grants provided under the present formula.

Perkins funds for the handicapped and disadvantaged are now divided between the secondary and postsecondary sectors either as a by-product of applying the statutory formulas to all types of grantees simultaneously or, in some states, by state-determined divisions of the funds into pools for LEAs, postsecondary institutions, and other classes of grantees. Both methods are unsatisfactory--the former because the same definitions of handicapped and disadvantaged cannot be applied validly to the different sectors; the latter because it is extralegal, ad hoc, and arbitrary. The relevant options include (a) prescribing a federal rule for dividing funds between the secondary and postsecondary levels in each state (e.g., division in proportion to FTE vocational enrollment), (b) establishing guidelines for state-determined allocations between the sectors, and (c) making the secondary-postsecondary split at the federal level and distributing funds for each sector separately among the states.

Finally, the phenomenon that threatens to make the federally prescribed intrastate fund allocation process ineffectual is that states now have the power to distribute both the nonformula portions of Perkins funds (68 percent of the total) and state funds for vocational education in ways that may offset or nullify the formula-based distributions of the handicapped and disadvantaged set-asides. The available remedies include asserting federal control over the intrastate distributions of all Perkins funds and constraining states from "penalizing" grantees on the basis of their receipts of the formula-based grants. Realistically, however, the federal government cannot expect, by providing only about 6 percent of the funds, to exert significant control over intrastate distributions of vocational education resources.

Other formula modifications that might improve the distribution of Perkins funds generally include replacing the present population factors with better indicators of need or demand for vocational education services (ideally, in the longer run, with measures of FTE vocational enrollment); altering the per-capita income adjustment factor and perhaps making adjustments for other pertinent variables; and modifying the formula constraints.

An alternative to taking numbers of special-need students into account in the formula would be to allow the set-aside percentages to vary among states in proportion to the handicapped and disadvantaged percentages of each state's student population (or, preferably, of each state's vocational enrollment). Relying on this method alone, however, would improve the distributions of Perkins funds for the handicapped and disadvantaged at the expense of worsening the distributions of other Perkins grants.

The structural approach to improving the distributions is to reverse the present arrangement of first apportioning all Perkins funds among states and then dividing each state's allotment into shares for particular target groups. Under the alternative structure, specified shares of the available funds would be set aside at the national level for the handicapped, the disadvantaged, and other groups and purposes. Each such pot of funds would then be distributed among states according to appropriate criteria--e.g., funds for the disadvantaged might be allocated in proportion to numbers of low-income persons. Of the available options, this is one most likely to produce fund allocations proportionate to needs.

Turning to the distributions of Perkins handicapped and disadvantaged set-aside funds within states, the relevant alternatives to the present system include options for changing the statutory fund distribution formulas, options for altering the secondary-postsecondary division of funds, and options for ensuring that changes in the distributions of *other* vocational education funds do not offset the prescribed distributions of funds for the handicapped and disadvantaged.

The main problems with the present intrastate distribution formulas have to do with the formula factors, but the short-run options for improving the factors are very limited because data on vocational education enrollment, much less handicapped and disadvantaged vocational enrollment, are generally not available. The long-run solution is to produce such data (as Congress intended when it directed NCES--thus far with little apparent effect--to develop a new vocational education data system). Meanwhile, it would probably be better to distribute funds according to the total numbers of handicapped and disadvantaged enrollees (i.e., not just vocational) enrollees in each LEA and institution than to continue using the present improvised, unreliable, and unverifiable counts of "handicapped and disadvantaged students served in vocational education." As to formula improvements other than changes in the basic factors, there are reasons to consider (a) adding additional factors, such as measures of local economic conditions and fiscal capacity, (b) modifying the mathematical form of the present and the formula portion of federal aid is only one-third of that, or two percent of total outlays. No matter how that two percent were distributed, it would take only a small twitch in the distribution of the remaining 98 percent to reassert full state control. Even if federal formulas were used to distribute all Perkins grants plus matching funds, the authority to distribute seven-eighths of all vocational education resources would still remain firmly in nonfederal hands.

SUMMARY: FINDINGS AND POLICY OPTIONS

Both the interstate and intrastate mechanisms for distributing Perkins handicapped and disadvantaged set-aside funds are flawed in ways that detract from equity and cause mismatches between federal aid and needs for financial assistance. At the interstate level, the main problems are that (1) the statutory fund distribution formula does not take account of interstate variations in the percentages of students who are handicapped and disadvantaged, and (2) fixed fractions of the formula-based allotments (10 and 22 percent for the handicapped and disadvantaged, respectively) are set aside for special-need students without regard to the actual concentrations of such students in each state. At the substate level, there are two major problems associated with the formula-based fund distribution process. One is that the formula factors are poorly defined, unlikely to be measured validly, and subject to manipulation by the grantees. The other is that the statutorily prescribed fund distribution process has been undercut by a procedure not provided for in law (but tacitly approved by OVAE/ED), wherein some states divide federal funds into separate "pools" for different classes of grantees (LEAs, postsecondary institutions, area vocational schools) before applying the formulas specified by law. In addition, looming in the background is the broader question of whether a formula-based distribution process, no matter how well designed, can be meaningful when it controls only 32 percent of the available federal funds.

The pertinent policy options have already been examined, and only a brief recapitulation is offered here. Options for improving the interstate distribution include changes in the interstate distribution formula itself, changes in the rules for dividing funds by purpose and target group, and changes in the structure in which these components are embedded.

The formula change with the greatest potential to improve the distribution of Perkins handicapped and disadvantaged set-aside funds would be to take explicit account in the formula of the numbers of special-need students in each state. This could be done, for example, either by treating the percentages of special-need (particularly low-income) persons as weighting factors in the formulas or by distributing certain portions of the available funds according to counts of special-need persons rather than counts of population or enrollment.

Similar skewing of the distribution of Perkins nonformula aid might also conceivably be rejected by OVAE/ED on the grounds that the allocation criterion is improper, but this cannot be taken for granted.[129] Explicit or overt behavior is not the real problem, however. Intelligent state officials can offset the formula-based distributions without ever linking their own fund allocations explicitly to the availability of federal money. A federal distribution in favor of places with large concentrations of low-income students, for example, can be nullified by a state distribution in favor of grantees with high placement rates, high-technology programs, or innovative approaches to vocational education--all attributes more likely to be found in better-off communities than in places with high concentrations of the disadvantaged. Precluding these subtle types of fiscal substitution is obviously much more difficult than deterring overt offsetting of federal with state funds.

To deal with a similar problem, the possibility that states would redistribute general state aid to LEAs so as to offset the distribution of federal compensatory education funds, Congress wrote into ESEA Title I the stipulation that

> No payments...under Title I will be made to a State [that] has taken such payments into consideration in determining the eligibility of [an LEA] for State aid, or in determining the amount of that aid...in such a way as to penalize the [LEA] with respect to the availability of State funds (45 CFR, Sec. 116.44, October 1, 1976).

There is no similar provision in the Perkins Act; nor was their one in the previous legislation.[130] Incorporating such a restriction into the Perkins Act would not stave off the more subtle kinds of state offsetting behavior, but it would at least signal Congressional concern over the problem and, perhaps, deter some of the more blatant forms of supplanting. It would be necessary in the case of the Perkins Act, however, to reword the restriction so that it covers nonformula Perkins grants as well as state aid, since skewing the distribution of the former is the easiest method available to states to offset the formula-based allocations.

The foregoing notwithstanding, the reality must ultimately be faced that the federal government can do relatively little to influence the distribution of vocational education resources while contributing only a minor fraction of the cost. Recall that federal aid, in the aggregate, amounts to no more than about six percent of total vocational education spending, is likely to be used instead as general aid to states, LEAs, and postsecondary institutions. Handicapped and disadvantaged enrollees in vocational programs can expect to receive only a minor fraction of the special, supplemental services that Congress intended to provide and that the present level of funding would theoretically support.

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[129] States are required to set forth in their state vocational education plans the criteria they proposed to use in allocating funds among eligible recipients (P.L. 98-524, Sec. 113(b)(5)), and the plans are subject to ED approval.

[130] According to Long and Silverstein (1981b), a similar "no penalization" clause did exist under the 1968 version of the VEA, but an examination of that statute reveals no such provision.

Detailed findings pertaining to the individual provisions have been presented in the previous chapters, but the following brief summary may provide a perspective different from that offered by the separate analyses of particular requirements:

One major finding is that the targets themselves are poorly defined and excessively broad. The category of disadvantaged students, in particular, is sprawling and vaguely bounded. A large fraction, perhaps a majority, of all vocational students falls within it, but there are no provisions for concentrating funds so that a limited number of students can be served effectively or so that priority will be given to those with the greatest needs. The term "vocational student" itself is vague enough to cover most high school students and a majority of postsecondary enrollees. Consequently, even if all the other provisions were otherwise rigorous and effective, it is questionable that federal aid would reach the students Congress intended to help.

But the other provisions are far from being rigorous and effective. Of the statutory requirements that should be useful, in theory, for ensuring that grantees use Perkins grants to augment vocational education services for those in the target groups,

- the *supplement, not supplant requirement* is inoperative because it has never been backed up with specific definitions and tests or even applied specifically to outlays for the handicapped and disadvantaged;
- the *maintenance of effort requirement* has been made useless by an interpretation that it covers only funds from state sources (and, in any event, it never pertained specifically to funds for the handicapped and disadvantaged);
- the statutory *guarantee of equal access* to programs for special-need students has been nullified by the perverse interpretation that it covers only programs explicitly supported with Perkins handicapped and disadvantaged set-aside funds;
- the provisions *mandating certain services* for all handicapped and disadvantaged vocational students have been rendered ineffective by the interpretation that they pertain only to how Perkins funds are to be used and not to services to which students are entitled regardless of the funding source; and
- the *requirement for 50-50 matching of federal aid* has been weakened by the interpretations that it applies only statewide and to services in the aggregate.

That leaves mainly the *supplemental services and excess cost requirements* with the potential to contribute significantly to the additivity of federal aid, and even this contribution is weakened by the presence of numerous gaps and loopholes in the rules and, in particular, by the absence of guidelines for quantifying excess costs.

In sum, the existing provisions offer, at best, assurance that the handicapped and disadvantaged will receive some extra services compared with their nonhandicapped and nondisadvantaged counterparts. They do not guarantee that the value of these extra services will amount, in the aggregate, to anything near twice the amount of federal aid, which is what the statute theoretically demands. More important, they do not guarantee that the supplemental services received by the handicapped and disadvantaged will be greater, by any significant amount, than what the same students would have received in the absence of the Perkins grants and Perkins requirements. The existing provisions, in other words, are too weak and too poorly designed to perform their intended and very important functions.

OTHER FINDINGS CONCERNING THE TARGETING OF AID

In addition to the foregoing findings about targeting effectiveness in general, certain other findings pertain to the effectiveness of the Perkins targeting provisions for particular categories of beneficiaries or in particular situations:

Postsecondary Institutions and Students

Although conditions in secondary and postsecondary vocational education are different, the Act applies to both of them requirements that seem to have been developed mainly with the high-school setting in mind, thereby creating special problems for targeting at the postsecondary level. Among these problems are that the definitions of handicapped and disadvantaged in the Act apply poorly to postsecondary students, raising additional questions about who is to be served; the nature of appropriate supplemental services for postsecondary students is often unclear; the prospects for confirming that excess costs have been incurred or that supplanting has not taken place are likely to be limited; and the flaws in the intrastate funding formulas are magnified when the formula is applied to postsecondary grantees. In addition, no satisfactory method of determining the postsecondary shares of Perkins handicapped and disadvantaged set-aside funds has been provided. These problems probably cannot be corrected without developing separate resource allocation and resource-use provisions tailored to the circumstances of postsecondary vocational education.

Handicapped Secondary Students

The Perkins funds set aside for special-need students are supposed to supplement services provided with "regular" funds, but handicapped vocational students at the secondary level already have far stronger claims to supplemental services under the federal Education of the Handicapped Act. LEAs must serve each such student "appropriately," according to an individual education plan, without regard to the availability of federal aid. It is not clear, therefore, whether or how Perkins funds are supposed to add to services that such students would have been entitled to anyway under the other law. Congress and OVAE/ED have yet to address this problem of built-in supplanting or to explain how the two sources of support for handicapped vocational students should be coordinated.

Relationships to Other Federal Laws and Programs

More generally, the Perkins Act takes little account of other federal and state programs designed to help the same target groups, leaving it unclear how Perkins grants should be used where other categorical aid is available. In addition to the aforementioned problem concerning aid for the handicapped, there are similar problems pertaining to aid for the disadvantaged. Perkins grants for disadvantaged secondary students, where used to support basic skills instruction, may supplant aid for the same purpose provided under the federal compensatory education program, ECIA Chapter 1, and under state-operated compensatory and remedial programs. At the postsecondary level, it is unclear what roles Perkins grants for the disadvantaged are intended to play relative to the far larger volumes of federal funding available for disadvantaged postsecondary students and/or for vocational training under such programs as Pell grants, student loans, JTPA, Job Corps, and special programs for disadvantaged enrollees in institutions of higher education. If there is a distinct role for the Perkins funds, it has yet to be defined.

FINDINGS CONCERNING OTHER CROSS-CUTTING ISSUES

Apart from the issue of targeting effectiveness, there are two other general reasons for concern about the existing array of resource allocation provisions: one, that they may have negative side effects on vocational programs; the other, that they are likely to distribute federal funds poorly.

Side Effects and Incentives

Although the rules governing uses of the Perkins handicapped and disadvantaged set-aside grants are ostensibly neutral with respect to the types of resources and services to be provided with federal funds, they may inadvertently cause resources to be allocated in educationally undesirable ways. Several provisions create incentives for grantees to spend federal funds on ancillary services, such as assessment, guidance, and counseling and on instruction in basic skills rather than on improved or intensified vocational instruction. Concerns about demonstrating compliance with the supplemental services and excess cost rules (and perhaps the nonsupplanting requirement) may induce grantees to favor services that are "safe" (i.e., distinctive and unambiguously supplemental) over those that are educationally most valuable. The service mandates in Sec. 204(c), as OVAE/ED interprets them, explicitly require LEAs to devote Perkins funds to ancillary services. The excess cost rules may also encourage grantees to spread funds thinly rather than to concentrate them and to skew the selection of target students toward students for whom substantial excess costs would have been provided even in the absence of federal aid. Such incentives diminish the likelihood that federal aid will generate better vocational programs for handicapped and disadvantaged students.

Fund Distributions

Both the interstate and intrastate distribution mechanisms are seriously flawed. At the interstate level, the combination of a population-based fund distribution formula and fixed-percentage set-asides for the handicapped and disadvantaged yields allocations poorly matched to educational and financial needs. At the substate level, the factors on which fund allocations are supposed to be based are poorly defined, not measurable with existing data, and manipulable by the grantees, while other relevant factors have been omitted from the formulas. The Congressionally prescribed distribution process has also been undercut by an extralegal procedure, tacitly approved by OVAE/ED, whereby states divide funds between levels and types of institutions in whatever proportions they want. Moreover, overshadowing all these problems is the possibility that the formula-based instrastate distribution process as a whole may be more charade than reality because states can so easily use other Perkins funds (the 68 percent not allocated by formula) or funds of their own to offset the federally prescribed distributions of the handicapped and disadvantaged set-aside grants.

THE ROLES OF CONGRESS AND OVAE/ED

The fiscal and resource allocation requirements attached to Perkins grants for the handicapped and disadvantaged have been shaped by both Congress and the Executive Branch.

Each is based on a provision of the statute, but the statutory language is often general and imprecise. The tasks of filling in the details and giving each requirement specific, operational content have been left, in most instances, to OVAE, or more generally, to the Department of Education or the Executive Branch as a whole.[131] The end results, therefore, reflect both what Congress wrote into the law and how OVAE/ED has interpreted the law and translated it into regulations, guide-lines, and administrative practice. Since the main finding of this study is that the Perkins resource allocation and targeting provisions are poorly designed and too weak to advance federal vocational education goals, the questions arise of (1) whether the fault lies with Congress or OVAE/ED--that is, with the statutory provisions Congress wrote or the way the Executive Branch has interpreted and implemented them, and (2) what roles Congress and OVAE/ED might be expected to play in making the targeting of federal funds more effective.

Certain problems with the targeting of Perkins grants clearly originate with Congress. The looseness of the target-group definitions is due in considerable part to the multiple, broad criteria of disadvantagedness that Congress wrote into the law and to the lack of any statutory priorities for selecting the students to be served. The likelihood that federal funds will flow disproportionately into ancillary services and basic skills instruction stems partly from incentives embedded in the Act. The weakness of the matching requirement reflects Congressional determinations that matching should be statewide and divided between state and local levels as each state sees fit. The flawed fund distribution formulas are Congressional creations (although the doctrine that states can divide funds as they please between secondary and postsecondary institutions is an invention of OVAE/ED's). More generally, Congress can be said to have contributed to, or acquiesced in, the ineffectiveness of the targeting provisions by failing to make certain requirements stronger and more specific (e.g., the nonsupplanting requirement, the equal access rule, and the service mandates), even when it should have been evident that they were not being implemented, or implemented properly, by OVAE/ED.

To a considerably greater extent, however, the shortcomings of the present targeting mechanism can be attributed to OVAE/ED's failure to translate provisions of the Act into specific, operational, enforceable, and sufficiently rigorous rules. The pertinent provisions, in most instances, are not self-interpreting or self-implementing. Their efficacy is contingent on positive Executive Branch action to add operational details, to develop appropriate regulations and guidelines, and to interpret the law in a manner consistent with Congressional intent. Therefore, by merely remaining passive, OVAE/ED has the power to make requirements inoperative, effectively annulling the provisions Congress wrote. In such key instances as the following, OVAE/ED either has declined to interpret statutory requirements at all or has interpreted them too weakly or sketchily to make them effective:

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[131] As explained earlier, no attempt has been made to determine whether particular interpretations reflect the views of OVAE or of other components of the Education Department, such as the Office of the General Counsel. Similarly, no inquiry has been made into possible influences of the Office of Management and Budget or other Executive Branch entities on the Perkins rules. Consequently, the term OVAE/ED, used throughout the report, should be read to mean "OVAE and/or other parts of the Education Department, perhaps with other Executive Branch input."

- The supplemental services and excess cost rules have been undercut by OVAE/ED's lack of specificity regarding definitions of supplemental services and methods of measuring excess costs.
- The nonsupplanting requirement has been rendered inoperative by OVAE/ED's failure to formulate operational definitions and tests of supplanting, or even to indicate that the rule applies specifically to grants for the handicapped and disadvantaged.
- The target-group definitions have been made even looser than they would have been otherwise by OVAE/ED's failure to specify who counts as a vocational student or to interpret the criterion that target-group members must "require special assistance to succeed in vocational education."
- The Sec. 204(c) mandate to provide certain services to all handicapped and disadvantaged vocational enrollees has been made ineffective, and possibly educationally damaging, because OVAE/ED has not defined the required services or explained what grantees must do to comply.

Moreover, OVAE/ED's contributions to the ineffectiveness of targeting of aid under the Perkins Act have not been limited to acts of omission. In several important instances, OVAE/ED has interpreted statutory provisions (explicitly or tacitly) in ways that appear to distort, undercut, or contradict Congressional intent, and as a result the effectiveness of these provisions as targeting instruments has been reduced or eliminated. The most clear-cut cases are the following:

- An unjustifiably narrow OVAE/ED interpretation of the Act's equal access requirement, irreconcilable with the statute, renders the requirement meaningless, eliminating the protections for the handicapped and disadvantaged that Congress sought to establish.
- OVAE/ED's unwarranted conclusion that the Act's maintenance of effort requirement applies only to funds from "state sources" makes that requirement useless as a fiscal constraint.
- An unwritten OVAE/ED interpretation allowing states to distribute Perkins funds by establishing separate fund "pools" for different classes of grantees alters and distorts the statutorily prescribed intrastate fund distribution process.

What can be said, then, about the relative responsibilities of Congress and OVAE/ED for the weakness of the present targeting mechanism? If one begins with the premise that it is Congress' role to specify generally how federal funds are to be used and OVAE/ED's role to interpret the law and implement the program as Congress intends, then the preponderance of the responsibility is OVAE/ED's. While it is true that Congress could have written more detailed and explicit requirements and that certain statutory provisions are flawed, it is also true that the present statute, flaws and all, could support much stronger resource allocation and targeting rules than are now in effect. That some statutory provisions have gone uninterpreted and unimplemented, while others have been interpreted in ways seemingly designed to make them ineffective, indicates that OVAE/ED has assigned low priority to ensuring that Perkins grants add to services for the target groups. Whatever the shortcomings of the statute, they have been magnified by OVAE/ED's approach to implementing the law.

Many reasons can be cited for why neither Congress nor OVAE has shown strong interest in designing a more effective mechanism for targeting federal funds. At the Congressional level, part of the problem seems to be lack of appreciation of how important targeting, or additivity, is in achieving educational goals. It is not a matter of lack of awareness; the presence of the supplemental services and excess cost rules in the statute indicates that some drafters of the Act, at least, understood how easy it is for federal aid to be turned into general support. What does seem to be lacking is the concept of additivity as a prerequisite for substantive results: that if federal funds are nonadditive they provide no services, and consequently no educational benefits can be obtained.

An emphasis on additivity is discouraged by certain aspects of political reality. One is that effective targeting of aid is painful to the grantees. It frustrates state and local officials to have to spend money on things they value no more than marginally, when they could use the same funds to buy things they value more highly. It shifts attention from the "gift" aspects of aid to the restrictions, or "strings." Another factor is that effective targeting, though a prerequisite for educational benefits, is no prerequisite for political credit. Whether or not grant funds are additive, the sponsors and administrators can point to students served, personnel employed, and programs underway--all thanks, supposedly, to federal funds. That the same or equivalent activities might have gone on anyway, but without the "federally aided" label, does little to diminish the glow. The one political factor that could tilt the balance in the other direction, making targeting a major concern, is less important in vocational education than in other areas of education that receive federal funds. That factor, the presence of interest groups urgently interested in services for the target students, undoubtedly accounts for the much stronger targeting provisions found in the federal handicapped and compensatory education programs. Vocational education grants attract no comparable constituency. Instead, the main interested parties are the suppliers, for whom the fewer restrictions, the better. The

Congressional attitude, then, is at best ambivalent: a mix of indignation over misuse of federal funds, coupled with reluctance to trouble the grantees.

While much of the above applies to OVAE/ED as well, there are two special considerations that bear even more directly on the agency's less-than-enthusiastic implementation of the Perkins targeting provisions. One is that the Perkins Act became law at a time of deregulatory fervor. The Department had reduced its compensatory education regulations to a small fraction of their former selves; dozens of categorical grant programs had been folded into an unrestricted block grant. It was no time for activist implementation. OVAE/ED's 1985 comments on the proposed Perkins regulations are indicative: over and over, in response to requests for greater specificity in the rules, the answer is the same: "no greater specificity is called for; to interpret is to restrict." Had OVAE drafted tough regulations, they would never have seen the light of day.

The second special consideration is OVAE's role in the vocational education community. OVAE officials are members in good standing. They are at least as much the community's representatives as its regulators. Constraining vocational educators is not one of the agency's high priorities. The statutory provisions are broad and imprecise; often, they can be construed narrowly or expansively. They would support rigorous targeting provisions, but they do not unambiguously demand them. Given OVAE's history and its loyalties, the agency is unlikely to restrict its constituents more than the statute explicitly requires. In more than one instance, as has been shown, the agency has leaned over backwards, straining logic where necessary, to avoid interpretations that would give the rules teeth.

All of this, of course, bears directly on the prospects for improving the Perkins targeting mechanism. While OVAE/ED could do a great deal on its own, acting within the bounds of the present statute, to target grants for the handicapped and disadvantaged more effectively, such action is unlikely barring a major shift in the agency's (or the administration's) orientation. As a practical matter, any initiative to improve targeting will probably have to come from Congress. Before that happens, however, the treatment of special-need vocational students will have to become a more salient political issue.

10. PERKINS GRANTS FOR PROGRAM IMPROVEMENT

Prior to the Perkins Act, most federal vocational education aid *not* set aside for such special populations as the handicapped and disadvantaged was available for general support of ongoing vocational programs. Such federal money, though characterized as "aid for vocational education," was essentially equivalent to unrestricted federal financial assistance to state and local education agencies. In 1984, in what was billed as a major change in the federal purpose and role under the Perkins Act, Congress stipulated that henceforth general-purpose funding would be eliminated. Instead, the 43 percent of Perkins grants not earmarked for particular target groups (about $327 million in FY 1989) was to be expended only for "program improvement, innovation, and expansion" activities. Maintaining existing vocational programs was explicitly ruled out as a legitimate use of federal funds.

This chapter considers whether the program improvement, innovation, and expansion grants provided under Title IIB of the Act are likely to be used as Congress intended and to have the effects that Congress hoped for when it revised the federal vocational education program in 1984. Specifically, is more federal aid likely to be used for program improvement than in the past?[132] Are federal funds less likely to translate into general support of vocational programs? Is more program improvement activity likely to be carried on in vocational education than would have gone on if the nominal purpose of the federal program had not been altered? In addition, other aspects and implications of the Title IIB program improvement grants are considered, including the likely effects on intrastate fund distributions and on resource mixes in vocational programs.

To lessen the suspense, the principal conclusions are that the new Title IIB grants are likely to do little to stimulate additional spending for program improvement, innovation, and expansion activities, and it is doubtful that significantly more such activity will be carried on under the present Act than would have been carried on if the law had not been changed. Title IIB funds are about as likely to be used for general support--i.e., to maintain ongoing vocational programs--as were funds under the previous Vocational Education Acts. The kinds of targeting provisions that might indeed have channelled additional resources into program improvement activities were not written into the statute or the regulations when the stated purpose of federal aid was changed. The nominal shift under the Perkins Act from a general subsidy for vocational education to support for program improvement is likely, therefore, to be reflected only minimally in reality. As one former OVAE official aptly put it when describing the Title IIB program improvement grants at a recent conference, "this is the old basic program of vocational education--cut back."

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[132] The term "program improvement" is often used in this chapter as shorthand for the statutory phrase "program improvement, innovation, and expansion," but only where confusion is unlikely between its broader and narrower meanings.

In light of these conclusions, considerable attention is devoted in the latter half of this chapter to alternative designs for a program improvement grant program--alternatives that might do more than the present provisions to achieve the goals Congress established in 1984. Among the more moderate alternatives (options within the existing Perkins framework) are proposals for (a) focusing federal funds on the "core" program improvement activities--research, development, testing, evaluation, and installation of new or improved vocational programs; (b) limiting outlays of federal funds to expenses that exceed the regular costs of operating programs, or the costs that would have been incurred anyway to serve the same students; (c) limiting the amounts of federal aid that may be expended, and the circumstances in which they may be expended, for equipment; (d) strengthening the requirement for state-local matching of Perkins program improvement grants; and (e) establishing guidelines for the distribution of federal funds within states. Also discussed are more drastic federal policy options, such as offering fiscal incentives for program improvement and concentrating the available program improvement funds on organized research, development, testing, and evaluation projects.

The remainder of the chapter is organized into four sections. The first describes the Title IIB legal framework and explains briefly how it evolved. The second deals with the problems of defining program improvement activities and permitted uses of federal funds. The third examines the resource allocation implications of Title IIB as presently constituted and the likely effects of changes in definitions and rules. The final section presents and assesses a number of policy alternatives, including some that could be accommodated within the present statutory framework and others that would require more drastic changes in program strategy and design.

DESCRIPTION AND EVOLUTION OF TITLE IIB

Improving programs, expanding programs, and developing new programs have been stated federal goals in vocational education since 1963, but it is only under the Perkins Act that a major portion of federal aid has been reserved specifically for these purposes. The history of the program improvement aspect of federal involvement is, in a nutshell, that it began as just a statement of purpose, developed through a series of small activities peripheral to the main federal aid program, and emerged in 1984 as, on the basis of its 43-percent share of federal aid, nominally the most important single activity funded under the Perkins Act.

Program Improvement Prior to the Perkins Act

The very first purpose of federal assistance mentioned in the preamble to the original Vocational Education Act of 1963 was

> ...to authorize Federal grants to States to assist them to maintain, extend, and improve existing programs of vocational education, [and] to develop new programs of vocational education (P.L. 88-210, Sec.1).

However, this goal statement was not backed up either with earmarked funds or with a requirement to devote resources to program improvement, and program improvement was not one of the six authorized uses of funds enumerated in the statute. Thus, at the outset, the federal effort to encourage improvement was limited to inspiration and exhortation.

In 1968, the same goal statement was retained and program improvement was still not listed as a "use" of federal aid, but ancillary programs were established under the headings "research and training," "exemplary programs and projects," and "curriculum development" to carry out certain functions that now fall under the program improvement heading (Parts C, D, and I, respectively, of P.L. 90-576).

The 1976 statute foreshadowed the restructuring that was to occur under the Perkins Act in that it reflected Congressional misgivings about the general-aid aspect of federal vocational education funding and accorded higher priority to improvement-oriented activities. A revised statement of purpose identified as federal goals

> ...to extend, improve, and, *where necessary, maintain* existing programs of vocational education, (2) to develop new programs of vocational education... (P.L. 94-482, Sec. 101, emphasis added).

The phrase, "where necessary, maintain" can be viewed as a rhetorical first step toward elimination of the general-aid, or program maintenance, function.[133] In addition, the 1976 Amendments provided continued support for ancillary program improvement activities by authorizing funds for research and new program development, exemplary and innovative programs, and a program of curriculum development (P.L. 94-482, Secs. 130-133).

In 1984, there were enough votes in the Senate Committee on Labor and Human Resources to support the reorientation, in principle, from general aid to program improvement. Influenced strongly by the report of the NIE Vocational Education Study (1981), the

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[133] As explained by a Congressional staff member who participated in drafting the legislation, this was compromise language, reflecting the fact that those who wanted to eliminate general support in favor of aid for activities of special federal interest did not yet have enough votes to make the change in 1976.

Committee endorsed the conclusion that program improvement was being neglected, while ongoing programs were absorbing the federal funds. As the committee report put it,

> Recognizing the real needs for program improvement, the Committee is dismayed by the tendency of states and localities to use federal vocational education funding to reinforce existing practices rather than utilizing these funds to improve programs. It finds that a considerable cause of this problem is the lack of incentives for program improvement in the current VEA.[134]

The Senate bill (S.2341), reflecting these views, earmarked all nontarget-group funds for program improvement, innovation, and expansion efforts. The House bill would have allowed continued use of federal funds to "sustain existing programs of proven effectiveness," but the Senate view prevailed in conference committee. Authority to expend federal funds to maintain or sustain ongoing programs was deleted from the law.

The Legal Framework of Program Improvement Under Perkins

Title IIB of the Perkins Act stipulates that 43 percent of federal aid to states is to be used for activities described as "vocational education program improvement, innovation, and expansion" (P.L. 98-524, Secs. 102, 251), but the legal framework defining and governing these uses is remarkably sparse. The statutory provisions directly applicable to Title IIB grants consist only of the following:

- Section 251, which consists of a list of 25 permitted uses of Title IIB improvement, innovation, and expansion funds;
- Section 252(a), which authorizes each state to expend Perkins Title IIB funds, subject to other statutory provisions, in the manner that it deems "best suited" to carry out the purposes of the Act;
- Section 252(b), which allows funding of "community-based organizations of demonstrated effectiveness;"
- Section 252(c), which says that projects supported with Title IIB funds shall be "of sufficient size, scope, and quality" to give reasonable promise of meeting the needs of the students served; and
- Section 502(a)(4), which requires 50-50 state-local matching of federal program improvement funds.

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[134] Senate Committee on Labor and Human Resources, Report to accompany S.2341 (op. cit.).

In addition, several general resource allocation provisions of the Act apply to Title IIB grants, including the general supplement, not supplant requirement in Sec. 113(b)(16).

The list of permitted uses of funds in Sec. 251 of the Act is heterogeneous and replete with redundant and overlapping items.[135] Items 1 through 4 authorize grantees to expend grant funds for the following broad improvement-related purposes or activities:

1. "the improvement of vocational education programs within the State designed to improve the quality of vocational education [sic]...";
2. "the expansion of vocational education activities necessary to meet student needs and the introduction of new vocational education programs, particularly in economically depressed urban and rural areas of the State";
3. "the introduction of new vocational education programs, particularly in economically depressed urban and rural areas"; and
4. "the creation or expansion of programs to train workers in skilled occupations needed to revitalize businesses and industries or to promote the entry of new businesses or industries into a State or community."

Two other listed items authorize spending on particular improvement-related functions--curriculum development (item 8) and inservice and preservice training (an item listed separately under Sec. 251(b)).[136] Another such function, technical assistance, is mentioned in item 1.

Several items on the list indicate that grantees may conduct program improvement, innovation, and expansion activities pertaining to particular program or subject areas, occupational categories, client groups, services, or institutional or geographical settings. Among the activities named are:

- "exemplary and innovative programs which stress new and emerging technologies" (item 5),

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[135] According to one Congressional staff member interviewed for this study, the list in the Senate bill consisted of nine items, but it grew during subsequent stages of the legislative process to include items from the House bill and to reflect special interests of individual senators and representatives, some of which are related peripherally, if at all, to program improvement, innovation, or expansion. In the haste of the conference committee proceedings, no effort was made to consolidate narrow items within broad ones or otherwise to rationalize the list.

[136] Unlike all the other items, which identify *permitted* uses of funds, preservice and inservice training of vocational educators is presented in the statute as a *required* use of funds; but since no minimum outlay for such training is specified, it is difficult to see any meaningful distinction between permitting and requiring grantees to support this activity.

- "improvement and expansion of postsecondary and adult vocational education programs and related services for out-of-school youth and adults" (item 6),
- "improvement and expansion of career counseling and guidance" (item 7),
- "the expansion and improvement of programs at area vocational education schools" (item 9),
- the conduct of special courses designed to teach mathematics and science through practical applications as parts of students' vocational programs (item 11),
- "prevocational programs" (item 14),
- "programs of modern industrial and agricultural arts" (item 15),
- "the provision of vocational education through arrangements with private vocational education institutions, private postsecondary educational institutions, and employers..." (item 22), and
- the improvement or expansion of any vocational education activities authorized under Title IIA of the Act--which is to say, vocational activities aimed at the handicapped, the disadvantaged, and other target groups.

The last of these is significant because it establishes a link between grants to *provide* services for the handicapped, disadvantaged, and other special-need students under Title IIA and grants to *improve* services under Title IIB. The statement that Title IIB funds may be used to improve the services provided with Title IIA funds highlights the difference in purposes between the two types of grants. It also makes clear that contrary to what some aid recipients allegedly believe, Title IIB grants are *not* reserved for students excluded from the target groups in Title IIA, and support for the latter students is not necessarily limited to the Title IIA set-aside grants.

All the items listed immediately above are redundant in that spending for all such activities would be permitted anyway under the previously cited general items 1-4. Their main function is to emphasize aspects of vocational education in which members of Congress have expressed particular interest.

Another set of items authorizes spending on equipment and facilities. Item 10 authorizes outlays for equipment acquisition and facilities renovation; items 21 and 23 single out high-technology equipment and communications and telecommunications equipment; and item 20 allows spending to construct area vocational school facilities in areas having a "demonstrated need." Yet another cluster authorizes spending on certain specific functions, generally of an ancillary nature, including coordination with employers (item 12), support of student organizations (item 13), support of certain sex-equity activities (item 16), stipends for needy students (item 17), placement services (item 18), and day care services (item 19). Then, on the off chance that something might have been left out, the Conference Report on P.L. 98-524 explains that

> In listing the authorized activities under the State grant, the managers note that this list is intended to be general and illustrative, not limiting. States may fund activities that are not specifically listed but are in compliance with the purposes of the legislation (Conference Report on H.R. 4164, Congressional Record--House, H 10775).

Note that some of the 25 listed items seem to authorize expenditures for services not necessarily related to program improvement, innovation, or expansion. This is particularly true of the items pertaining to day care, student stipends, and support of student organizations, the item authorizing private provision of services, and some of the items pertaining to equipment and facilities construction. Of course, such outlays could be to improve the services in question, but the statute itself seems not to require that connection. In this respect, Congress has not limited the uses of Title IIB grants to efforts to improve and expand vocational offerings.

The program regulations applicable to Sec. 251 of the Act (34 CFR, Sec. 401.59) mainly repeat the statutory language but also shed light on OVAE/ED's interpretation of a key distinction made by Congress--that between federally fundable program improvement, innovation, and expansion activities, on one hand, and nonfundable maintenance of existing programs, on the other. OVAE/ED seeks to make this distinction by dividing the 25 authorized uses of Title IIB funds into two groups: activities that are "inherently related" to program improvement and activities that are not (50 FR 33282). The former include such unambiguously improvement-related activities as research and curriculum development, which OVAE/ED believes, reasonably enough, should be permanently supportable with Title IIB funds (but they also include, inexplicably, such things as day care and placement services). The latter category includes all the general items authorizing federal support for improving vocational programs, introducing new programs, and expanding programs, plus the many program-specific items enumerated above. These activities, according to the regulations, are not inherently related to program improvement and so may not be "maintained" with Title IIB funds but may be supported to the extent that, and as long as, they involve improvement, innovation, or expansion (Sec. 401.59(b)).

The regulation then goes on to define the latter concept further by specifying that

> any vocational education project, service, or activity that was not provided by the recipient during the instructional term that preceded funding under [Title IIB] may be considered a new, expanded, improved, modernized, or developed project, service, or activity and may be considered so for up to three years (Sec. 401.59(c)).

To this, the Department has added the stipulation, in the form of a response to a comment on the regulations, that

> States and eligible recipients may use funds under this program to support *only those particular aspects* of their services and activities in the latter category...which represent an innovation, expansion, improvement, modernization, or development (50 FR 33282, emphasis added).

However, no further guidance is offered on what constitutes an "aspect" of a service or activity, and so, as will be seen, it is unclear what costs are chargeable to Title IIB grants when a particular vocational program is being improved.

The purpose of this whole taxonomic exercise may seem obscure, but it underlies OVAE/ED's extremely permissive views of how grantees can spend their Title IIB funds. The important thing to recognize about the logic of the regulation is that it shifts the focus from identifying *program improvement activities* to identifying *vocational programs that are being improved*. The doctrine that the latter, not just the former, can be supported with Title IIB funds (for up to three years) is what OVAE/ED uses to justify the continued use of federal aid to pay the ordinary operating costs of vocational programs. This point is developed at length in the next section of the chapter.

Apart from the list of permitted uses, the most important statutory provision pertaining to program improvement grants is that allowing states to use such funds as they think "best suited" to accomplish the purposes of the Act (Sec. 252(a)). This provision establishes in a single sentence that Title IIB, as presently constituted, is a relatively unrestricted block grant to states. States agencies are empowered under this provision both to decide how funds shall be allocated among permitted uses (or to delegate such decisions to local authorities) and to determine how Title IIB funds shall be distributed among local recipients. State discretion in these respects appears to be virtually unlimited. A state could decide, for example, to spend all or none of its Title IIB funds on equipment, or conceivably to devote all such funds to authorized uses unrelated to program improvement, such as day care or student stipends. States also may apportion funds among classes of institutions as they choose (e.g., by formula, by competitive processes, or at the discretion of state officials) and apparently may even exclude whole classes of eligible recipients (e.g., all postsecondary institutions) from funding under this title.

The statutory provision that projects funded under Title IIB shall be "of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project" (Sec. 252(b)) has been given no operational content either in statements of Congressional intent or in the regulations. Interestingly, identical language under ESEA Title I became the basis for an important concentration rule, under which services were to be provided in significant doses to limited numbers of pupils rather than more widely diffused. No such principle has been established in vocational education, however; nor is there any indication of whether Congress had that or something else in mind when it included the "sufficient size, scope, and quality" clause in the Act.

The statutory requirement for 50-50 state-local matching of Title IIB funds has been interpreted in the regulations as applying (a) on a statewide basis rather than to individual recipients and (b) to all program improvement, innovation, and expansion activities in the aggregate rather than to particular activities supported with Perkins Title IIB funds (50 FR 33300). This means that states or recipients can "match" federal aid by spending their own funds on anything covered by the list of permitted use of funds, regardless of whether any federal funds are allocated to that activity or even to the entity providing the matching funds. For example, the Title IIB funds that a junior college expends to develop a new computer technology program could be "matched" by a rural school district's outlays to renovate a barn for its animal husbandry program. Each state is free to decide whether to match federal aid with state funds or to pass through some or all of the matching obligation to local grantees. As will be shown later, however, so many normal, ongoing vocational education outlays are likely to qualify as matching funds under the present rules that the details of how matching is handled lapse into insignificance. Most grantees should be able to come up with sufficient matching funds easily without spending any money they would not have spent in the absence of a matching requirement.

Finally, although the Perkins supplement, not supplant requirement presumably applies to Title IIB funds as well as to all other Perkins grants, no guidance has been provided in the regulations or elsewhere as to what nonsupplanting means in connection with program improvement grants. As will be shown later, OVAE/ED's interpretations of permitted uses of Title IIB funds allow direct and overt substitution of federal aid for nonfederal funds that would otherwise have been expended on the same programs and students. In the program improvement context, as in connection with grants for the handicapped and disadvantaged, the nonsupplanting requirement has been and remains essentially a dead letter.

PROBLEMS IN DEFINING PERMITTED USES OF PERKINS PROGRAM IMPROVEMENT GRANTS

The statute says that Perkins Title IIB funds are for program improvement, innovation, and expansion, but there is much uncertainty about what the three terms mean and what expenses may be paid with Title IIB grants. Even individuals directly involved in drafting and interpreting the law often disagree about which uses of funds are legitimate. Resolving the definitional issues is important because, as will be seen, how loosely or tightly permitted uses are defined has much to do with whether Title IIB grants will advance the program's stated goals.

Developing New Programs (Innovation)

To appreciate the problems that arise in defining the proper uses of program improvement grants, consider the types of activities that a service provider would have to carry out and the types of costs it would incur in establishing a new vocational education program. Suppose that an LEA develops, introduces, and then operates a program in an occupation for which that LEA offered no training before. The LEA incurs a variety of costs. Before serving any students, it must pay for such start-up activities as developing the new curriculum, training teachers and other staff, acquiring and installing equipment, purchasing initial materials, and perhaps building or renovating facilities. Once operations commence, the LEA must make continuing outlays for salaries of teachers and other personnel, replenishment of materials, operation and maintenance of facilities and equipment, and various overhead costs. In addition, there may be follow-up developmental costs, such as costs of evaluating the program and revising it if necessary. Which of these costs should be payable with funds provided under Title IIB (or with required state or local matching funds), or putting it differently, which should be considered legitimate costs of "innovation" under the Act?

The least restrictive answer, the answer most popular with state and local vocational educators, and the answer that seems to follow from the aforementioned OVAE/ED regulations and taxonomy is that *all* costs associated with the new program should be payable with Perkins funds for up to the three years that the program may be considered a "new" activity. These costs would include, for instance, salaries of teachers and other program staff as well as salaries of the program developers; all costs of equipment, materials, and facilities; and administrative and other overhead expenses. To claim these costs, the LEA would not have to show that they are "extra" or attributable to the program's newness; nor would it have to establish that the new program's costs exceed what would have been spent anyway to serve the same students. Anything up to the full cost of developing the new program and operating it for three years could be charged against Title IIB funds. To appreciate the implications of the foregoing "total cost" definition, contrast it with an alternative definition that distinguishes sharply between the costs of creating or improving a program and the costs of operating one. Under this alternative, the *incremental cost* definition, the costs payable with federal funds would be limited to the extra, or incremental, costs incurred because a new program was being developed, or, putting it differently, to the costs of the specific innovative activities, over and above normal operating costs, necessary to create the new program and put it into place. Allowable costs, under this definition, would include costs of program planning and design, curriculum development, teacher training, initial materials and equipment, program evaluation, and any other costs of creating, installing, and perfecting the new program. All ordinary costs of operating the program--i.e., costs that would be incurred whether or not innovation had taken place--would be excluded. For example, the salaries paid to instructional staff for teaching enrollees in the new program would not be chargeable to Title IIB under this definition, but salaries paid to the same teachers while they were being trained to operate the new program would be federally fundable. The dual rationales for the distinction are (1) that the purpose of Title IIB grants is to pay for developing, improving, or expanding programs, not for operating them, and (2) that since regular operating expenses would have been incurred to serve the same students whether or not a new program had been introduced, paying those expenses with federal aid would constitute supplanting of nonfederal funds.

The practical significance of the choice between the two definitions can be shown with a numerical example. Suppose that an LEA introduces a new program with start-up costs (program development, equipment acquisition, teacher training, etc.) of $60,000, regular annual operating costs of $50,000, and additional evaluation and program development costs of $5,000 per year during the first three years of the program's life. Under the total-cost definition, the LEA would be able to charge up to $225,000 to Title IIB over a three-year period (start-up costs plus three years of operating cost plus three years of evaluation and development costs). Under the incremental-cost definition, charges against federal aid would be limited to $75,000--the start-up costs plus the subsequent program development outlays. Thus, the incremental cost definition allows only a minor fraction of the new program's total cost to be paid with federal funds.

OVAE has issued no regulations or guidelines dealing explicitly with the issue of allowable costs, but there is no doubt that it subscribes to the view that grantees may pay the total three-year costs of new programs with Title IIB funds. One former OVAE official interviewed for this study declared flatly that a new program can be supported in its entirety with Title IIB funds for up to three years. The issue of supplanting does not arise, he said, because there are no state or local funds to displace--i.e., since the program is new, there was no previous funding. (He dismissed as irrelevant the point that state and local funds would otherwise have been expended to educate the same students in some other program.) At a conference on issues of compliance with the Perkins Act that the author attended, other former OVAE officials made public statements to the same effect.[137] Two current OVAE officials with whom the issue was discussed were more circumspect, but only slightly so. Both recognized that federal aid might cover costs that would have been incurred anyway and might simply displace state and local support for the same students. One agreed in principle that there should be an effort to focus Title IIB funds on activities that are "intrinsically program improvement." But neither saw any basis in current law for limiting Title IIB outlays to only nonrecurring or incremental costs. It appears that the prevailing, albeit unwritten, official doctrine is that anything up to the full three-year cost of a new program can be financed with Title IIB grants.

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[137] Conference on "Avoiding Audit Liability Under the Carl Perkins Act," sponsored by the American Vocational Association, Washington, D.C., October 16, 1987.

Improving Programs

Although the foregoing discussion pertains most directly to new programs, the same definitional issues arise in connection with program improvement and program expansion as well. The principle difference between introducing a new program and improving an existing one is that in the latter case only some aspects of a program are likely to be affected. OVAE/ED has stated, in a regulatory dictum cited above, that only those particular aspects should be supported with federal funds. Therefore, one would have to differentiate, under OVAE/ED's notion of allowable costs, between elements that are and are not improved. (Even local vocational education officials are unlikely to claim that the entire cost of a program that has been improved in some specific respect should be chargeable for three years to Title IIB grants.)[138] Then, having distinguished between improved and unimproved aspects, one must deal with whether the total costs or only the incremental costs of the former should be payable with federal funds. Consider how these issues manifest themselves in certain concrete situations:

Suppose first that only a program's curriculum is improved, while the teachers, the equipment, and all other resource inputs remain the same. The total cost of the improvement seems, in this instance, to be the same as the incremental cost--that is, it consists of the cost of developing the new curriculum and putting it into use (the latter might include, for example, costs of in-service teacher training and outlays for new materials). Conceivably, a grantee might assert that changing the curriculum makes the program "new" and thus federally fundable in its entirety, but it seems unlikely that such a claim would be taken seriously (but see footnote 7). Second, consider an improvement in a program's instructional staff. Suppose that a highly trained teacher with up-to-date skills replaces a teacher with less education and inferior skills, and suppose that the new teacher's salary is higher. What expenses associated with this improvement could legitimately be paid with Title IIB funds? Working with the OVAE/ED's total-cost definition, one might claim that the improved "aspect" of the program is the teacher, so all costs associated with the new teacher--salaries, fringe benefits, etc.--should be payable with Perkins funds for up to three years. In contrast, the incremental-cost view implies that only the increase in teacher pay (the difference between the new teacher's and the old teacher's salary) plus, perhaps, the costs of recruiting and training the new teacher are legitimately chargeable to federal aid.

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[138] There appear to be at least a few state and local officials, however, who would make this extreme claim. For instance, a speaker at the aforementioned conference (see fn. 6) told the story (presumably apocryphal) of an LEA that claimed the whole cost of its program for training truck drivers as an expense under Title IIB on the grounds that the program had been "improved" by switching from regular to premium gasoline for the trucks.

Third, consider the type of improvement that is unquestionably the most important in practice, a replacement of old with new equipment. Suppose that an LEA replaces older-model word processors, machine tools, or farm equipment used in its vocational programs with newer, more capable models. The costs incurred include those of acquiring and installing the new equipment, plus such related costs as teaching the instructional staff how the new equipment works. There might also be related changes in operating costs, as the more modern equipment might be either more or less costly than the old equipment to operate and maintain. Which of these qualify as costs of program improvement?

In the case of equipment acquisition, the main issue is not whether total costs or incremental costs ought to be allowable. The most important expense, the price of the equipment itself, qualifies under both definitions. Instead, the key question is whether a distinction should be made between equipment replacement and equipment improvement and, if so, whether only the cost of the latter should be allowed. According to Sec. 251(a)(10) of the statute, Title IIB funds may be expended for equipment "necessary to improve or expand vocational education programs within the State." This seems to imply that if new equipment merely replaces old equipment and no improvement takes place, the cost of the new equipment should not be payable with federal funds.[139] By extension, it also seems to imply that when an equipment purchase involves both replacement and improvement, only the portion of the cost attributable to improvement should be federally funded. For example, if an old machine is replaced with a new and better machine, and the new one costs, say, 30 percent more than a machine with the same capabilities as the machine being replaced, then it is arguably only the 30 percent increment that should be federally funded. Merely replacing worn out old equipment is a normal operating cost or, in the Perkins Act's terminology, a cost of maintaining existing programs, which is something Title IIB funds are not supposed to support.

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[139] Note, however, that Sec. 251(a)(10) is only one, albeit the most general one, of items on the list of permitted uses of funds that pertains to equipment. Neither Sec. 251(a)(21), which permits acquisition of "high technology equipment," nor Sec. 251(a)(23), which permits spending for "communications and telecommunications equipment," imposes the requirement that such equipment must be necessary for program improvement and expansion. This may be because it was assumed either that acquiring "high-tech" equipment would always improve a vocational program or that grantees would not normally have such equipment, and therefore the issue of replacement would not arise.

Both OVAE staff and state and local officials generally seem less certain about how to treat costs of program improvement than costs of new programs, except that they seem quite certain about the last issue mentioned above, the cost of new equipment. All parties consulted are of the opinion that equipment purchases should be fully chargeable to Title IIB, regardless of whether, or to what degree, the new equipment is better than the old. There is no reason to believe that any distinctions are made in practice between equipment improvement and equipment replacement or between equipment that is and is not necessary to improve vocational programs.[140] Otherwise, notions of how to identify the improved "aspects" of programs seem extremely murky. Opinions span the range from narrow, cautious interpretations of allowable outlays to the claim that revising a curriculum makes a program "new" and therefore federally fundable in its entirety. OVAE/ED has done nothing to clarify the matter.

Note that it can make a big difference under the total-cost definition of allowable costs, but not under the incremental-cost definition, whether a program is labeled "new" or "improved." The present OVAE/ED doctrine, though vaguely defined, seems to be that grantees may pay the full costs of new programs but only the costs of certain aspects of improved programs with Title IIB funds. Often, however, a program's newness may be in the eye of the beholder--or, more to the point, in the eye of the administrator seeking to finance a program with federal aid. There is an incentive to label revised, modernized, or otherwise improved programs "new" whenever possible to benefit from the more liberal rules. But if only incremental costs could be paid with federal aid, the distinction between "new" and "improved" would cease to matter. Regardless of labeling, only costs in excess of regular operating costs would qualify for federal funding.

Program Expansion

Program expansion can take many forms. It might consist of increasing enrollments in existing classes, creating additional classes or sections, or replicating a program in other locations. These changes in scale may either increase or reduce the cost per student. In addition to changes in operating costs, there may be nonrecurring costs associated with an expansion, such as costs of acquiring additional equipment, enlarging facilities, training additional staff to teach additional classes, installing program replicas at new sites, and perhaps monitoring and evaluating the replicas to ensure satisfactory quality. Once again, the question is which of these costs are legitimate charges against Title IIB grants.

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[140] Millsap et al. (1989) report that local vocational education officials often think of Title IIB grants as "federal equipment money," available to fund any and all outlays for vocational education equipment.

The definitional issue is slightly more confusing with respect to program expansions than with respect to new programs. It is not clear which "aspects" of services and activities, to use the regulatory phrase, "represent an expansion" of a program. That expression could be taken, under OVAE/ED's total-cost concept, to encompass all costs associated with the increased size of the program, including, for instance, the full costs of operating replicas of the original program at new sites for up to three years; or it could be understood to cover only the incremental costs of actually expanding the program (e.g., training more staff and setting up new sites) but not any costs of operating the program once it had been expanded. OVAE officials and others with whom Title IIB was discussed had very little to say about what is federally fundable under the heading of program expansion.

Which definition is chosen could make a very large difference. Suppose, for example, that a program has been so successful in one of an LEA's high schools that the LEA decides to set up identical programs in three other schools. Suppose that the program at each site costs $50,000 per year to operate and $30,000 at the outset to install. Under the total-cost definition, the LEA could charge $540,000 to Title IIB (installation costs plus three-year's operating cost at three schools), while under the incremental-cost definition only $90,000 could be federally financed.

The issue of fiscal substitution, or supplanting, is pertinent to program expansion in much the same way as to new programs. When a program expands from one of an LEA's high schools to another, it serves students who, in the absence of the expansion, would presumably have enrolled in and been served by some other program offered by the same LEA. Costs would have been incurred to serve those students whether or not the expansion took place. If the nonsupplanting principle applies, then only the incremental costs of expansion seem legitimately chargeable to federal aid.

Summary

When Congress wrote Title IIB, it did not define clearly either the types of activities to be construed as innovation, improvement, and expansion or the types of expenses to be payable with federal funds. OVAE/ED did not recognize, or declined to make, the key distinction between developing, improving, or expanding a program and operating one. Instead, it defined federally fundable costs (implicitly) in an extremely unrestrictive manner. Grantees are apparently allowed, under OVAE/ED's interpretation, to pay the full costs of new and expanded programs, including routine operating costs, with federal aid; to construe liberally the federally fundable costs of program improvement; and to buy virtually any equipment, whether related to program improvement or not, with federal dollars. This means that much Title IIB money is likely to be used for expenses that grantees would have incurred anyway, leaving little to augment program improvement activities. Under an alternative definition, limiting expenditures of Title IIB funds to the incremental costs of improvement, innovation, and expansion efforts, opportunities to use Perkins Title IIB funds to maintain vocational programs would be greatly reduced, and the likelihood that federal aid will generate additional program improvement activity would be enhanced.

IMPLICATIONS FOR RESOURCE ALLOCATION AND TARGETING

When Congress passed the Perkins Act in 1984, it theoretically changed the purpose of the federal grants not earmarked for particular target groups from supporting ongoing vocational programs to paying for program improvement, innovation, and expansion. This section considers whether the reoriented federal program is likely to yield the intended results. Specifically, it deals first with the targeting or additivity issue: to what degree is federal aid under Title IIB likely to translate, as Congress intended, into support for innovation, improvement, and expansion of vocational education programs? In addition, it touches on two other important aspects of resource allocation: one, the distribution of Title IIB funds among grantees within states; the other, how federal aid is likely to influence the resource mixes in vocational education programs.

Targeting and Additivity

Whether and to what degree Title IIB will channel additional resources into innovation, improvement, and expansion efforts is the central issue, since it touches most directly on whether the Congressionally established goals will be achieved. The issue can be posed most pointedly in comparative terms: Is there likely to be significantly more program improvement, innovation, and expansion activity in vocational education under Title IIB than there would have been if the same federal dollars had been distributed instead as unrestricted, general-purpose grants? A negative answer means that Title IIB grants, nominal goals notwithstanding, are likely to contribute little to either the quality or the supply of vocational education programs.

To accomplish its nominal goals, Title IIB must either *constrain* or *induce* grantees to expend more money on improvement, innovation, and expansion than they would have spent otherwise. It must *add to* the volume of such activity that grantees would have undertaken in the absence of Title IIB grants. The rate of additivity, defined as the percentage of Title IIB funds that translates into additional spending for the specified purposes, measures the degree to which federal aid is having its intended allocative effects. For instance, if a $1 million Title IIB grant to a particular recipient pays for $200,000 worth of program improvement that would not otherwise have been undertaken plus $800,000 worth of activity that would have been undertaken anyway, one would say that the grant is 20 percent additive, meaning that 20 percent has generated new activity and 80 percent has substituted for (supplanted) state and local funds.

Is there anything about the Title IIB program, as presently constituted, that is likely either to constrain or to induce grantees to spend federal aid additively on program improvement, innovation, or expansion? Taking into account both the program's design (the rules attached to federal aid) and the fiscal environment in which the program operates, the answer is "no in most instances." Most LEAs and postsecondary institutions should be able to accept and spend whatever Title IIB funds their states give them, comply fully with the statute and regulations, as currently interpreted, and yet do nothing more to innovate, improve, or expand their programs than they would have done without such aid. Title IIB, therefore, is likely to be a low-additivity grant program. Little of the federal aid is likely to translate into additional support for the nominally aided activities; most is likely to be transformed into general support, or maintenance of ongoing programs, the expressed intent of Congress to the contrary notwithstanding. The line of reasoning leading to this pessimistic assessment may be summarized as follows:

First, the Title IIB grants received by most recipients are likely to be small relative to the amounts of the recipients' own expenditures that qualify as improvement, innovation, and expansion outlays under OVAE/ED's unrestrictive definitions.

Second, there is nothing in the present Title IIB legal framework to prevent grantees from spending Title IIB funds for activities that would have been undertaken and paid for with nonfederal funds in the absence of federal aid; i.e., there are no effective barriers to using federal aid to supplant state or local funds.

Third, given points one and two, most grantees should have ample opportunity to spend all their Title IIB funds on programs or activities that would otherwise have been supported with nonfederal funds; thus, they can comply with the terms of their grants without undertaking any improvement-related activities that they would not have undertaken anyway.

Fourth, in addition to having the opportunity to substitute federal for nonfederal funds, grantees also have strong motivation to do so--namely, each federal dollar that substitutes for, or "frees up," a nonfederal dollar is effectively transformed into general aid, available to be used according to local, not federal, priorities.

Fifth, the 50-50 matching requirement, which theoretically should help to constrain grantees to use federal aid additively, is unlikely to have that effect in the case of Title IIB because (a) it applies only statewide and in the aggregate, and (b) the federal grants and matching funds combined are still likely to be small compared with local outlays for things that qualify as program improvement under the OVAE/ED definitions.

Sixth and finally, there are no fiscal incentives in the Title IIB program to use federal aid additively; that is, a grantee that does use Title IIB funds to augment its improvement, innovation, or expansion efforts is treated no differently from a grantee that merely substitutes federal for nonfederal funds.

Perhaps the easiest way to see the basis for these propositions is to consider the issues of compliance and fiscal response from the perspective of an individual recipient, say an LEA, that receives an allotment of Title IIB funds from its state. Suppose, using a reasonably realistic figure, that the LEA's Title IIB grant amounts to 4 percent of its vocational education outlays, and assume initially that the state does not require the LEA to match the federal aid with local funds.[141] The LEA's obligation, then, is to spend 4-percent of its vocational education budget on activities that qualify as federally fundable program improvement, innovation, and expansion activities under the OVAE/ED definitions. Assuming that there is no cheating (or that the requirement is fully enforced), what must the LEA do to comply? Consider first the unlikely possibility that the LEA would have spent *nothing* on improvement, innovation, or expansion activities in the absence of the Title IIB grant. That leaves it no choice. If it accepts the federal money, it must initiate such activities and spend at least the required 4 percent of its budget to fund them. Federal aid, in this improbable circumstance, would have a 100 percent additive effect: all of it would be expended for program improvement, innovation, or expansion activity that would not otherwise have been undertaken.

But suppose next that the same LEA, even in the absence of federal aid, would have expended *more* than 4 percent of its budget for activities deemed to be improvement, innovation, or expansion under the OVAE/ED definitions. Say, for concreteness, that 10 percent of its outlays would have gone for such activities. To fulfill its obligation under this assumption, the LEA need not alter its spending pattern at all. The only thing it must do to demonstrate compliance is a bookkeeping transaction, wherein the LEA charges against its Title

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[141] The estimate that an LEA would receive a Title IIB grant equal to about 4 percent of its vocational education budget is based on (a) the assumption that about 6 percent of the cost of vocational education nationally is federally funded under the Perkins Act, (b) the fact that about 40 percent of that aid is distributed under Title IIB, and (c) recognition that not all LEAs receive Title IIB funds. Of course, if a particular state concentrated its Title IIB funds on a limited number of recipients, each such recipient would receive a larger share of its vocational funding from Title IIB, but as will be seen, even a substantial degree of concentration would not lead to different conclusions about the likely additivity of federal support.

IIB grant part of what it would have spent anyway on activities that qualify for Title IIB funding. In this case, the additive effect of federal aid is *zero*. Federal funds are nominally "used for" the specified purposes, but no more program improvement activity takes place than would have taken place without the Title IIB grant. Federal dollars have merely displaced the local dollars that would otherwise have supported the same activities.

This brings up an empirical question: how likely is it, in practice, that an LEA would normally spend enough of its own money on so-called program improvement activities that it would be able to absorb federal aid without spending any more? Of course, data on the subject are not available. LEAs do not normally account even for their total vocational education spending, much less for spending on improvement, innovation, or expansion. Nevertheless, by making deliberately conservative assumptions about such spending, one can show that most LEAs should have little trouble finding enough suitable outlays to absorb their Title IIB funds several times over.

One must recognize that innovation, improvement, and expansion in vocational education are not federal inventions. Activities that qualify as improvement-related, especially under OVAE/ED's unrestrictive definition, do go on and would go on in vocational education without regard to the availability of federal aid. The pace of such activity may be slower than critics (and the Congress) would like, but that does not mean that the outlays that qualify as program improvement costs are low compared to the modest scale of federal support.

To illustrate, make the conservative assumption that an LEA replaces or substantially revises each of its vocational education programs only once every 20 years. At that modest rate, 5 percent of all programs, on average, would undergo revision each year, and so roughly 5 percent of vocational education outlays would be for programs that are new or substantially revised in the current year. But according to the OVAE/ED rules, a program is considered new or improved not only in the year in which the innovation or improvement takes place but also for two subsequent years. This means that in any given year, roughly 15 percent of vocational education spending would qualify as spending on new or improved programs. A typical grantee, then, should have little difficulty in identifying enough "new" and "improved" programs to consume the 4 percent or so of its vocational education budget derived from Title funds.

Moreover, the 15-percent figure substantially understates the magnitude of qualifying local outlay because it omits federally fundable activities other than innovation and improvement. For instance, program expansion is also a permitted activity. In the normal course of events, changes in student demands for specific vocational programs should ensure that considerable "expansion" activity is taking place, even when the aggregate size of an LEA's vocational education enterprise is static or declining. If the allowable costs of program expansion are defined as broadly as they seem to be, then it is likely that so-called expansion alone could absorb much of the available Title IIB aid. Another major opportunity to absorb federal aid arises out of the right that grantees enjoy, under OVAE/ED's interpretation of the rules, to charge virtually all purchases of vocational education equipment to Title IIB. Data are not available on the aggregate amount spend for such equipment in a given year, but it appears that such purchases alone could consume most of the Title IIB funds. In addition, still more Title IIB funds could be absorbed by outlays for the various functions that OVAE/ED has classified in the regulations as "inherently" program improvement, such as teacher training, student stipends, placement services, day care services, and payments to private providers of services. Taking all these into account, the total pool of qualifying, federally fundable activities is probably five or more times as large, on average, as the volume of Title IIB grants. Thus, the stipulation that Title IIB grants must be "used for" program improvement activities is no bar to converting such grants into general support for ongoing vocational education programs.

But what about other program requirements? Do they not pose barriers to the kind of fiscal substitution described above? Two potential barriers need to be considered: the nonsupplanting requirement and the requirement for 50-50 state-local matching of Title IIB grants.

The same points about the nonsupplanting requirement as were made in connection with Perkins grants for the handicapped and disadvantaged (Chapter 6) apply to program improvement grants as well. The requirement to "supplement, not supplant" in Sec. 113(b)(16) of the Act has been rendered ineffective as a targeting instrument by OVAE/ED's long-standing decision not to define supplanting operationally and not to introduce specific tests or criteria of whether supplanting has occurred. As interpreted by OVAE/ED the nonsupplanting rule bars only two kinds of behavior: one, reductions in aggregate statewide support for education ("macrosupplanting"); the other, direct substitutions of federal funds for the state or local funds formerly used to pay for specific expenditure items, such as the salaries of particular staff members or staff positions ("microsupplanting"). Neither is germane to the kinds of substitutive behavior likely to occur in connection with program improvement grants. The conspicuously missing interpretations, which would be germane, are that supplanting has occurred when Title IIB funds are used (a) to support program improvement activities that would have been undertaken anyway, (b) to pay operating expenses that would have been incurred even in the absence of program improvement, and (c) to cover costs that would have been incurred to serve the same students even in the absence of Title IIB funds. Unless the nonsupplanting rule is reinterpreted along these lines, it will remain irrelevant for advancing federal program improvement goals.

The requirement for 50-50 matching should, in principle, diminish substitution of federal for state or local funds by doubling the amount of improvement, innovation, and expansion spending that grantees must show to demonstrate compliance with the terms of the grant. In the case of Title IIB, however, the effect of matching is unlikely to be significant for two reasons. First, most LEAs should not find it difficult to demonstrate that they spend twice the amount of federal aid on activities that OVAE/ED defines as improvement, innovation, or expansion. Second, the potential constraining effects of matching are reduced by the interpretations that matching applies (a) statewide rather than to individual grantees and (b) to qualifying activities in the aggregate rather than to particular activities supported with federal funds. If these interpretations were changed, some grantees might be forced to allocate additional funds of their own to program improvement activities. Unless the definitions of qualifying program improvement activities were tightened at the same time, however, it is unlikely that this effect would be substantial.

Certain countervailing forces could make Title IIB grants more additive than the foregoing analysis suggests, but whether they are significant is a matter that must be investigated empirically. One is that the state agencies that administer Perkins grants may themselves require grantees to use federal funds for projects or activities that would not normally have been supported with state and local funds. The likelihood of such behavior would depend on how interested the officials in each state are in improvement of vocational programs. Another possibility is that state agencies may spend substantial sums of Title IIB funds themselves on projects or activities that would not otherwise have been undertaken.[142] This, too, depends on how improvement-oriented state officials are. A third possibility is that some LEAs and postsecondary institutions would feel morally obligated to use Title IIB grants as Congress intended, namely, to augment their program improvement efforts, even though the rules give them the opportunity to transform the grants into general aid. That is, Title IIB may succeed in some instances through "moral suasion" if not through effective targeting provisions. Finally, Title IIB grants may sometimes be used as intended simply because federal and state-local priorities happen to coincide. For all these reasons, Title IIB grants may sometimes have greater additive effects than one would expect on the basis of the program's design.[143] Note, however, that these possibilities all depend on state or local officials *voluntarily* deciding to use Title IIB funds to promote the purposes set forth in the Act. That the proper use of federal aid depends, in essence, on state or local good will underscores how small the distinction is between Title IIB program improvement grants and general-purpose federal support.

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[142] States are authorized under the Act to reserve up to 20 percent of all Perkins grants (which probably means a considerably higher percentage of Title IIB grants) for state-run activities. Since states do not ordinarily administer vocational education programs directly, they are less likely than LEAs or postsecondary students to use these reserved funds to cover routine operating costs of programs. It is possible, of course, that states would substitute Title IIB funds for state revenues that would otherwise have been used to finance certain state-run vocational education activities, such as curriculum development and teacher training programs.

The general conclusion that emerges from all this is that there is a disjunction between the proclaimed goals of Title IIB of the Perkins Act and the policy instruments provided to accomplish them. Federal aid can help to upgrade or expand vocational education only if and to the extent that it adds to the volume of program improvement, innovation, and expansion activity that would otherwise have been undertaken. Yet if the foregoing analysis is correct, only a small fraction of the $300+ million in Title IIB funds is likely to have any additive effect. The remainder constitutes general support for vocational education, indistinguishable from the general aid provided under the pre-1984 statutes. It follows, then, that unless the provisions for accomplishing the proclaimed goals are strengthened, the hopes of those who fought to redirect federal aid into program improvement are likely to be disappointed.

Effects on Intrastate Distribution of Title IIB Funds

The statutory provision that each state may spend funds "in the manner best suited to carry out the purposes of this Act within the State" seems to give state agencies unlimited discretion to distribute Title IIB funds to whichever LEAs and postsecondary institutions and in whatever amounts they like. Nothing in the Title IIB legal framework explicitly requires a state to take into account such factors as local needs for program upgrading or expansion, local capacity to improve programs, or the merit of proposed improvements. Nothing is stipulated about distributional equity, and nothing seems to preclude even arbitrary or capricious distribution processes. The one bit of language in Title IIB that does pertain to distribution--the stipulation that federal funds should support new programs and program expansion "particularly in economically depressed urban and rural areas"--appears to have been totally ignored.

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[143] Title IIB funds may also sometimes be used additively for a less uplifting reason, namely, that some vocational educators and school business officials may not be astute or flexible enough to appreciate how easy it is to turn the supposedly categorical grants into general aid. This is likely to be a short-run phenomenon, however, as even the less-capable administrators are likely to learn the necessary bookkeeping techniques from their more advanced professional peers.

No predictions can be made of how funds will actually be distributed under this carte blanche arrangement. Each state is free to formulate its own priorities and criteria. Whether the distributions will favor rich or poor, high-need or low-need, or urban, suburban, or rural communities or whether they will be skewed toward secondary or postsecondary institutions is for each state to determine. No information on actual distributions of Title IIB funds within states was available when this report was written.[144] However, given the vagaries of state education politics, it is safe to say that highly diverse distributional choices will be made by different state governments, and very different distributional patterns will emerge.

What is the federal interest in how Title IIB funds are distributed within states? The statute sends contradictory signals. On one hand, one might reasonably infer from the authority conferred on states by Sec. 252(a) to distribute funds as they please that Congress has decided that intrastate distributions are not the federal government's business. On the other hand, several other parts of the Perkins Act imply that at least certain aspects of fund distribution are matters of federal concern. As already noted, Sec. 251(a) stipulates that new and expanded programs are to be supported "particularly in economically depressed urban and rural areas of [each] state." In the same vein, Sec. 113(b)(5) requires states to allocate more Perkins funds to economically depressed or high-unemployment localities than to places without such problems. More generally, Sec. 251(a) requires states to use Title IIB funds to meet the needs identified in their state vocational education plans; and those plans, in turn, are to be based on assessments of (among other things) labor market demands, student needs, and the quality of vocational programs throughout the state, and of the capacities of local agencies to deliver adequate vocational education services (Sec. 133(a)(3)). It seems reasonable to conclude from the above that a state that does not take the specified factors into account in distributing Title IIB funds is not complying fully with the law; but absent any criteria of *how* the named factors should affect the distribution, it is not clear how one would apply such a compliance standard.

Apart from whatever direct interest the federal government may have in the intrastate distributions of program improvement dollars, there is another reason for federal concern about the Title IIB fund distribution process. How states apportion Title IIB funds may affect a distribution about which the Congress unquestionably does care, namely, the distribution of Perkins funds for handicapped and disadvantaged vocational students. As explained in Chapter 8, the 32 percent of Perkins money earmarked for such students is distributed within states according to statutory federal formulas; however, because states are free to distribute the remaining 68 percent of Perkins funds (including the 43 percent available under Title IIB) as they choose, they can use the discretionary funds to alter or offset the prescribed formula allocations. The drafters of the Perkins Act seem not to have recognized that in a system of one-third formula grants and two-thirds discretionary grants the latter can always be used to defeat whatever geographical targeting the former was intended to accomplish. Because Title IIB provides most of the Perkins money distributable at state discretion, it is the principal tool with which the formula-based distributions may be undermined. That, if nothing else, makes the distribution of Title IIB funds a matter of federal concern.

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[144] NAVE has sponsored two studies, one using funding data reported under the General Education Provisions Act (GEPA) and one based on data from case studies, which should shed light on certain aspects of distribution patterns in the nation and in selected states.

There are a number of methods by which the federal government could control or constrain the distribution of Title IIB funds if it were thought appropriate to do so. They are discussed in the "policy issues and options" section of this chapter.

Effects on the Resource Mix: the Incentive to Buy Equipment

Even if Title IIB grants add little to total support for improvement, innovation, and expansion activities, they may still affect the resource mix in vocational education. The effect that one can predict most confidently is a substantial increase in equipment acquisition. The present federal rules encourage equipment purchases in at least three ways: first, by making virtually any investment in equipment an acceptable and trouble-free use of Title IIB funds (one that raises no issues of compliance); second, by defining allowable (federally fundable) costs of equipment even more liberally than allowable costs of other kinds of resources; and third, by subsidizing equipment purchases more heavily than purchases of other kinds of vocational education resources or services. Each is explained below.

The loose rules pertaining to equipment purchases were mentioned in the earlier discussion of allowable costs. Although the statute indicates that equipment outlays should be linked to program improvement or expansion, OVAE/ED seems to allow virtually any vocational education equipment to be paid for with Title IIB grants. The significance to state and local officials is that equipment purchases raise no concerns about compliance. Local officials need not worry about whether programs or "particular aspects" of programs qualify as new, improved, or expanded when Title IIB money is spent on equipment; equipment outlays apparently qualify automatically. Other things being equal, this makes buying equipment one of the more attractive use of Title IIB funds.

A second incentive to purchase equipment arises out of the very liberal way in which the federally fundable costs of equipment are defined. As explained earlier, OVAE/ED seems to recognize no difference between equipment improvement and equipment replacement. Title IIB funds may be used to cover the latter as well as the former. This contrasts sharply with the treatment that would be accorded any nonequipment outlay. For example, if a retiring high school vocational education teacher were replaced by a new teacher, the LEA would not be able to pay the new teacher's salary with Title IIB funds, since merely replacing an old teacher would not constitute an improvement, innovation, or expansion; yet if a worn-out machine were replaced with a new machine, the full cost of the new machine would be considered a federally fundable "improvement." The question would not even be raised of whether or to what extent the new machine is "better." This unrestrictive definition of what is federally fundable creates an important incentive to spend Title IIB dollars on equipment.

A third and less obvious incentive to purchase equipment arises from the substantially higher effective rate of subsidy that Title IIB provides for equipment than for nonequipment outlays. The differential subsidy stems from the traditional accounting practice in education of treating costs of equipment as if they were incurred in the year the equipment is purchased rather than over the equipment's useful life. In accordance with this practice, grantees that purchase equipment to improve their programs are allowed to pay the total lifetime costs of that equipment with Title IIB funds, whereas if they purchase anything but equipment, they are limited to paying only three-years' worth of the costs. Thus, a substantially higher fraction of equipment costs than other costs may be covered with Title IIB money.

To illustrate, suppose that an LEA's effort to improve a particular program entails spending $50,000 for new equipment and hiring a teacher aide at $5,000 per year, and assume that the useful life of the equipment is 10 years. From an economic standpoint, the equipment and the teacher aide have approximately the same annual cost--i.e., the equipment, at $50,000 per year for 10 years of service, costs the same $5,000 per year as the aide.[145] Under Title IIB, however, the two kinds of cost are treated very differently. The LEA is allowed to charge to Title IIB the entire $50,000 cost of the equipment but only the portion of the aide's wages incurred during the first three years after the improvement is made (i.e., $15,000). The $50,000 equipment outlay is treated as a cost incurred during the first year, whereas in fact it is a cost incurred over a ten-year period. The net result is that 100 percent of the lifetime cost of the equipment is federally fundable, as compared with only 30 percent of the cost of the aide over the same ten-year period; or looking at it differently, the LEA would be allowed to charge to Title IIB more than 300 percent of the cost actually incurred for the equipment during the three-year period specified in the regulations.[146] This is a substantial inducement to favor equipment over nonequipment outlays.

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[145] To be more precise, the value of the $50,000 asset represented by the equipment depreciates by $5,000 per year. Under the accounting rules used by businesses, but not by school districts or postsecondary education institutions, it is the annual depreciation, not the initial cash outlay, that would show up on the books as the cost of the equipment.

Given these incentives, one would expect Title IIB recipients (a) to spend more Title IIB money on equipment than they would have spent if the incentives were neutral, (b) to buy more equipment and less of other resources than they would have bought otherwise, and (c) to substitute federally funded equipment for equipment that would otherwise have been financed with state and local money. The probable result is a distorted resource mix in vocational education. That is, vocational programs are likely to end up richer in equipment and poorer in other resources than local vocational educators would have thought optimal if given the same amount of federal aid without the skewed incentives.

POLICY ISSUES AND OPTIONS

The main general conclusion of the foregoing analysis is that the Title IIB program is not suitably designed to accomplish the goals that Congress proclaimed when it earmarked more than $300 million per year for program improvement, innovation, and expansion. As matters stand now, these dollars are likely to do little to make vocational programs better. Instead, they are likely to be used, contrary to Congressional intent, primarily to maintain ongoing programs and services. In addition, Title IIB grants may not be distributed in accordance with Congressional priorities, and may distort resource mixes in vocational programs by encouraging excessive spending for equipment.

What can or should be done differently? If program improvement is not just a slogan but a serious goal, how can Title IIB grants be redesigned to stimulate program improvement, innovation, and expansion efforts? This section presents an array of policy options aimed at alleviating the present problems. These options fall into two categories: those that can be accommodated within the existing Title IIB framework and those that entail more fundamental changes in federal strategy. The latter would require new legislation, as would a few of the former, but most of the former could be implemented administratively by an appropriately motivated OVAE or Education Department.

Clarification of Program Improvement Goals

Before dealing with the means of accomplishing federal program improvement goals, the goals themselves need to be revisited. While crafting the Perkins Act in 1984, Congress shifted the nominal purpose of the nontarget-group grants from supporting vocational education generally to supporting only innovation, improvement, and expansion. At the level of rhetoric this was an easy change to make, but the present disjunction between the nominal goals and the actual design of the Title IIB grant program suggests that Congress may not have fully appreciated, or fully accepted, the consequences of changing the program's purpose. It would be useful, therefore, to reconsider what the altered federal role implies and then either to modify or reaffirm, but in any case to clarify, the purpose of the Title IIB program. The points that need to be confronted in such a reexamination include the following:

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[146] I.e., under the stated assumptions, the cost of the equipment (depreciation) during the first three years would be $15,000, but the grantee is allowed to claim the full $50,000, or 333 percent as much.

First, Title IIB can be either a serious program aimed at improving vocational education or a relatively unrestricted block grant but not both. The two are incompatible. Congress failed to resolve this contradiction in 1984, and until it does so, there is little chance that it will make the design changes needed to produce an effective program.

Second, additivity of federal aid is a prerequisite for accomplishing federal program improvement goals. That federal funds must be supplemental have their intended effects has been recognized in the context of aid for the handicapped and disadvantaged, but it has not yet been accepted in connection with aid for program improvement. Until steps are taken to ensure that program improvement grants are additive, the federal emphasis on improvement will remain more a matter of rhetoric than reality.

Third, limiting federal aid to program improvement means withdrawing general federal aid for vocational education. In theory, Congress recognized this in 1984 when it eliminated the statutory authority to "maintain" existing programs with federal funds, but in fact the grants were not redesigned to shift resources from general support to program improvement activities. Thus far the change has been more nominal than real, leaving open the question of whether the old general aid philosophy has really been abandoned.

Statutory language concerning program goals admittedly has only limited operational significance, but clarification of the program improvement goals with respect to the foregoing points could serve at least three useful purposes: it could provide criteria that the Congress itself could use in judging the compatibility of means and ends under Title IIB; it could provide much-needed guidance to OVAE/ED on the intended uses of program improvement grants; and it could make Congressional intentions clearer to the vocational education community, thereby perhaps encouraging proper uses and deterring some improper uses of federal funds.

To affirm that the program improvement goal is serious and that achieving it requires additive program improvement grants, it might be constructive to insert at the beginning of Title IIB a goal statement similar to the following:

> **It is the purpose of this Title to assist the states in raising the quality of vocational education programs and broadening access to high-quality vocational programs by sharing in--(1) the costs of research, development, testing, evaluation, and other activities undertaken to develop new or improved vocational education programs, and (2) the costs incurred, over and above ordinary costs of program operation, to (a) introduce new or improved vocational education programs into practice, and (b) expand or replicate vocational programs of demonstrated superior quality.**

A statement of this kind (it could, of course, be worded in various ways) emphasizes that the purpose of federal aid is to assist recipients in financing the *extra* costs of program improvement, innovation, and expansion activities. Whether such a reformulation would affect practice depends on the accompanying resource allocation and targeting provisions, alternative versions of which are laid out below.

Options within the Existing Framework: Methods of Improving the Targeting of Title IIB Grants

Many steps could be taken within the existing Perkins framework to improve the targeting of federal program improvement grants. The following discussion of these options is organized according to this outline:

- Changes in the definitions of federally fundable activities and allowable costs
    - Limiting federal outlays to the incremental costs of program improvement activities
    - Narrowing and rationalizing the list of permitted uses of Title IIB funds
    - Clarifying the definition of federally fundable program expansion activities
    - Limiting federal funding of equipment
- Changes in other targeting provisions
    - Developing an effective nonsupplanting requirement
    - Strengthening the Title IIB matching requirement

All these options are based on the premise that raising the quality of vocational education programs is a serious federal goal and are aimed at making Title IIB less a general-purpose block grant and more a targeted program for upgrading vocational education.

Changes in the Definitions of Federally Fundable Activities and Allowable Costs

It was shown earlier in this chapter that the present loose definition of permitted uses of federal aid undercuts the purpose of the Perkins program improvement grants. An obvious remedial strategy (although not a complete solution) is to tighten the definition by limiting outlays of federal funds to activities and outlays compatible with the federal objective. Some specific methods of definition tightening have already been discussed. The following account does not repeat the detailed rationales for these alternatives but does emphasize some of the practical problems of implementation.

Option 1. Limit Federal Support to the Incremental Costs of Improvement, Innovation, or Expansion Activities. Probably the single most important step that can be taken to target Title IIB funds more effectively is to limit federally funded outlays to the *incremental* costs of program improvement activities. Under this option, as discussed earlier, federal aid would be usable only to pay for specific program improvement, innovation, or expansion activities, over and above the costs of operating vocational education programs. The federally fundable outlays would include costs of research, program and curriculum development, testing and evaluation, initial staff training, certain costs of equipment (but see below), and other costs of developing and setting up programs. Items *not* eligible for federal funding would include all costs of operating new, improved, or expanded programs once in place, including salaries of teachers and other staff (except for time devoted to program development), costs of materials, costs of equipment maintenance and replacement (see below), and costs of normal support and overhead services. The rationale for drawing this sharp line between regular operating costs and nonrecurring costs is to ensure that federal aid pays only for the extra costs that state or local agencies incur to upgrade or expand their programs and not for services that would have been provided anyway to the same students. The intent is to increase the fraction of federal aid expended on improvement-oriented activities that would not otherwise have been supported and to reduce opportunities for substituting federal aid for state or local funds.

This proposed change in the definition of federally fundable activities could be made administratively (i.e., through regulation), but for political reasons it may be desirable, and perhaps necessary, for it to be made legislatively. Defining allowable costs by regulation would be an exercise of the Education Department's power to interpret authorized uses of funds under Sec. 251 of the statute. Replacing the present (implicit) unrestrictive interpretation with the narrower incremental-cost definition would not go beyond the bounds of the statute. Nevertheless, limiting allowable costs to incremental outlays seems too fundamental a change to make administratively. It would represent a sharp break with traditional practice and could significantly affect patterns of resource use at the local level.

An administrative rule change would probably be challenged, and the issue would eventually have to be resolved by Congress anyway. Taking into account also OVAE's historical preference for unrestricted rather than targeted aid, the feasibility of an administrative initiative seems doubtful. A better approach would be to take up the issue in Congress, develop a full legislative history, and make the change explicitly in the statute.

Option 2. Narrow and Rationalize the List of Permitted Uses of Title IIB Funds. Apart from the definitions of allowable costs, two features of the list of permitted uses of funds in Sec. 251 of the Act detract from the effectiveness of Title IIB grants. One is that certain authorized activities are at best tenuously related to program improvement, a problem aggravated by OVAE/ED's decision to classify some of them as "inherently" program improvement. The other is that the list as a whole is poorly structured and replete with vaguely defined and overlapping items, making it difficult to discern how the range of federally fundable services is bounded. It would be useful to reexamine the list, restructure it in a more ordered way, and judiciously prune items unrelated to program improvement goals.

Consider first the candidates for pruning or rewriting. The items in Sec. 251 that seem to have little logical relationship to innovation, improvement, or expansion but that are said to be "inherently improvement-related" in Sec. 401.60 of the regulations are the following:[147]

- o assignment of personnel to work with employers (item 12),
- o support for personnel to carry out sex equity functions under Sec. 111(b) (item 16),
- o provision of stipends to needy students (item 17),
- o placement services (item 18),
- o day care services for children of students (item 19).

The issue is not whether these services deserve support. Day care services, student stipends, and sex equity functions, for instance, may improve access to programs for special-need students, and so are fundable under Perkins Title IIA. But there is no apparent rationale for authorizing indefinite support of such ongoing services from funds earmarked for program improvement. Such treatment creates the anomaly that activities directly associated with improving programs, such as hiring better teachers or acquiring better materials, may be federally funded for only a limited start-up period, whereas such ancillary functions as placement services and day care may be funded permanently.

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[147] There are also reasons to question the classification as "inherently improvement-related" of outlays for equipment and facilities (items 10, 20, 21, and 23 of Sec. 251), but these are discussed separately under Option 4, below.

It appears that when the Perkins Act was drafted, certain services unrelated to program improvement, but which certain members of Congress considered worthy of support, were simply appended to the list of permitted uses of funds in Title IIB. The unfortunate result is to obscure the purpose of Title IIB grants and blur the boundaries of the range of federally fundable activities. The option should be considered, then, of deleting these nonimprovement items from Title IIB and, if desired, placing them elsewhere in the Act, with appropriate accompanying specifications of the circumstances in which such activities are to be funded.

More generally, the intended scope of federally fundable program improvement activities could be clarified by restructuring the lengthy list of permitted uses in Sec. 251. The present list intermixes broad authorizations to spend federal funds on improvement, innovation, and expansion with specific and often redundant endorsements of particular types of vocational education, particular occupational categories, and particular instructional approaches or settings. A useful reorganization, therefore, would entail (a) subordinating the particular to the general, while (b) clarifying the types of activities qualifying for funding under each general heading.

The following is an illustration of the type of general language that could be used to indicate the types of activities eligible for funding with Title IIB grants. It reflects a number of other options proposed in this section, including the shift to an incremental-cost definition of federally fundable activities. Specific examples of activities qualifying for federal support could be inserted into the text, if desired, at the points indicated:

> (a) Each state may use funds available under this title to pay the federal share of the costs of developing and introducing into practice new or improved vocational education programs or services, including costs of research, curriculum development, testing and evaluation, and recruitment and training of teachers and other staff; costs of other necessary program development activities; and certain costs of equipment and facilities, as specified in Sec. [ ]. The programs and activities so assisted may include but are not limited to .... [insert list].
>
> (b) Each state may use funds available under this title to pay the federal share of costs of expanding vocational education programs of demonstrated superior quality, including costs of program development, testing and evaluation, and recruitment and training of teachers and other staff; other necessary costs of increasing the capacities of existing programs or replicating programs at new sites; and certain costs of equipment and facilities, as specified in Sec. [ ]. The programs so assisted may include but are not limited to ... [insert list].

Option 3. Clarify the Definition of Federally Fundable Program Expansion Activities. Program improvement, innovation, and expansion are treated as parallel, federally fundable activities in the Title IIB framework, but there are two respects in which expansion is on a different plane from the others. One is that unlike improvement and innovation, which are deliberate, purposeful acts, program expansion is often an automatic response to enrollment change. LEAs, in particular, are obliged to serve all enrollees, and to do so they normally expand or contract their offerings as needed. The other is that expansion per se is quality-neutral. Low-quality as well as high-quality programs may expand. Supporting program expansion indiscriminately does not necessarily advance federal goals. It seems appropriate, therefore, to consider qualifying the definition of federally fundable expansion activities by limiting support to (a) expansions of program capacity and (b) expansions of programs of demonstrated superior quality.

The purpose of the first limitation is to eliminate federal funding of "expansions" that merely reflect fluctuations in enrollment. It is difficult to distinguish, in practice, between those expansions and more purposeful, long-term enlargements of programs, but the distinction can be gotten at indirectly by specifying that federal aid may be expended only to increase program capacity. Thus, if a program that already had the capacity to accommodate 20 students experienced an increase in enrollment from 15 to 20 in a particular year, no federal funding would be allowed; but if a program with a capacity of 15 were modified to one with a capacity of 20, federal funding of the appropriate nonrecurring costs of the expansion would be permitted.

The purpose of linking support to program quality is, of course, to prevent federal funds from subsidizing the growth of low-quality programs. Unfortunately, introducing quality standards is easier said then done. States, LEAs, and postsecondary institutions are not generally required to rate their vocational education programs for quality, and certainly not in a manner that would show whether each program meets some general performance standard.[148] Linking federal funding to performance or quality would require states or grantees to engage in new kinds of program evaluation activity.

One possible approach to conditioning federal funding on performance is to stipulate that federal aid may be used to support the expansion of only those programs that yield above-average labor-market outcomes (e.g., wages and/or placement rates). To demonstrate compliance with this standard, states would have to establish systems for monitoring such outcomes--an expensive and technically difficult undertaking. Although such systems would be useful for a variety of purposes, it would hardly be worthwhile for states to develop them simply to qualify for small amounts of Title IIB funds. Therefore, it makes sense to contemplate this option only as part of a more general effort to assess, and perhaps reward, performance.

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[148] Sec. 113(b)(9) of the Act does require states to develop measures of program effectiveness and to evaluate at least 20 percent of federal aid recipients each year, but this requirement pertains only to federally aided vocational programs and does not oblige states to develop generalizable performance measures or standards suitable for interprogram comparisons.

An alternative method of setting a quality threshold is to limit federal support for expansion to programs that demonstrate above-average performance in imparting the knowledge and skills pertinent to their respective occupational fields. Assessing knowledge and skill gains would be less demanding than assessing labor-market outcomes, but even so, states would not be motivated to perform such evaluations just to be able to use Title IIB funds to expand programs. It appears, therefore, that setting quality standards, though desirable in principle, may not be practicable either in isolation or in the short run. It would become feasible only when and if more general requirements for performance assessment were instituted.

Option 4. Limit Federal Funding for Vocational Education Equipment and Facilities. According to NAVE survey findings (Swartz, 1989), the Title IIB program today is predominantly a program of federal support for acquisition of vocational education equipment. Under the present rules, as interpreted by OVAE/ED, that support is indiscriminate. Federal funds can be used to replace as well as to upgrade equipment and to buy equipment for programs that are not otherwise being improved. Spending on equipment is one of the easiest ways for grantees to substitute federal aid for state and local funds. Moreover, as explained earlier, the Title IIB rules create several strong incentives to spend federal aid for equipment, perhaps distorting resource mixes in vocational programs. There are multiple reasons, therefore, to consider limiting the use of federal aid for equipment procurement. Three different (but not mutually exclusive) forms of such limitations are outlined below.

One approach centers on the distinction between equipment improvement and equipment replacement. The latter, as explained earlier, is an ordinary cost of running a vocational program and, so construed, should probably be banned under the existing regulation prohibiting outlays of Title IIB funds to "maintain existing programs." OVAE/ED could impose such a ban administratively, or Congress could do it by clarifying that the authority to acquire equipment "necessary to improve or expand vocational education programs" does not extend to paying for replacement equipment with federal funds.

An obstacle to eliminating support for equipment replacement is that the distinction between replacement and improvement is not always easy to make. Often, a new item of equipment simultaneously replaces an old one and provides some capabilities that the old one did not possess. In such instances, restricting federal aid to equipment improvement means prorating the equipment's cost between replacement and improvement and allowing federal funding only of the latter. In principle, this can be done: the improvement portion of the equipment's cost is the amount in excess of the cost of replacing the old, superseded equipment with new equipment of identical capabilities; but in practice, the latter magnitude would often be hard to determine and subject to dispute. Grantees would be hard-pressed to make such prorations accurately (even setting aside their self-interest in inflating the improvement component), and auditors would have even greater difficulty in validating the results. It would be an administratively cumbersome process, therefore, to enforce the improvement-versus-replacement distinction.

A different, more positive approach is to specify affirmatively the circumstances in which equipment purchases are, as the statute says, "necessary to improve or expand" vocational programs. Grantees would be allowed to spend federal aid only on equipment that fits these specifications. One type of equipment that would presumably qualify is initial equipment for new programs. A new program, for this purpose, could be defined as a program that offers training for an occupation for which no training had been offered previously by the LEA or postsecondary institution in question. Problems could arise in distinguishing between authentic new programs and programs that have merely been given new labels, but this is something that states could reasonably be expected to monitor as part of their administrative functions. Another type of equipment that might be deemed eligible is initial equipment needed to replicate programs of demonstrated superior quality. The limitation to programs of superior quality would be desirable for reasons that have already been discussed, but there are questions as to whether and when that criterion can be made operational. A third category that could be included is equipment needed to implement major curricular revisions or modernizations of existing occupational programs. Such equipment, if qualitatively distinct from the equipment previously used in the program, might be thought of as akin to the equipment acquired when a program is new. In practice, however, this category is likely to prove problematic because of the difficulty of distinguishing between such equipment and ordinary equipment upgrading. Where only the latter is involved, the replacement-improvement dichotomy becomes relevant, and it would be appropriate to consider only the improvement portion federally fundable, as suggested above.

The foregoing options would limit federal support to only certain kinds of equipment, and hence would reduce federal equipment subsidies to a fraction of current levels; however, they would do so in an awkward manner, requiring distinctions between replacement and improvement and even between improvements of greater and lesser degree. A simpler and more direct options for curtailing equipment outlays is to limit federal funding to a minor fraction, say one-fourth to one-third, of equipment cost. Such a limitation would offset the strong pro-equipment incentives created by the current rules. It would be particularly effective to adopt this alternative in conjunction with one or both of the previous two--i.e., to limit federal funding to certain types of equipment and, in addition, to limit federal funding to a specified fraction of equipment cost.

Note that limiting the federal share of equipment cost in this manner would be equivalent to requiring each grantee to match the federal dollars devoted to equipment purchases at a greater than dollar-for-dollar rate. This implicit matching requirement would also be more specific than the regular Perkins matching requirement in that it would apply to each equipment outlay separately, and consequently it would be much more difficult to evade.

The ultimate weapon, of course, would be an outright ban on federal funding of equipment, but that may be going too far. Where real innovation is taking place, or where high-quality programs are being replicated, federal equipment funding may contribute significantly to the quality of vocational offerings. Limiting equipment outlays to a minor fraction of Title IIB grants is probably a more appropriate (and more attainable) goal.

Changes in Other Targeting Provisions

Narrowing the definitions of federally fundable activities and allowable costs would reduce opportunities for using Title IIB grants substitutively, but probably not by enough to ensure that federal dollars will increase the volume of program improvement activity. Most states and recipients would still find it possible to substitute much of their federal money for nonfederal funds. To illustrate, consider teacher training, which would surely qualify as a federally fundable program improvement activity, even under a relatively restrictive definition. Since federal funding of teacher training would still be allowed, there would be nothing to stop a grantee from using Title IIB funds to supplant whatever nonfederal funds would otherwise have been used to train vocational education teachers. The same holds true of any other improvement-related activity that grantees would have supported in the absence of federal aid. It is appropriate, therefore, to consider, along with definition tightening, other devices for limiting or deterring nonadditive uses of federal funds.

Option 5. Develop an Effective Nonsupplanting Requirement. Despite the presence of the supplement, not supplant provision in the statute, the principle that federal funds must add to but not displace state and local funds has not been applied in any meaningful way to Title IIB grants. Preventing supplanting entirely is impossible because it can never be established with certainty how much grantees would have expended for particular activities in the absence of federal aid. Nevertheless, some of the more egregious forms of substitutive behavior allowed by the present rules can be eliminated and some of the more subtle forms can be discouraged and reduced by introducing appropriately designed nonsupplanting rules.

What distinguishes a meaningful nonsupplanting requirement from a mere legislative sentiment is the present of specific tests, or operational criteria, of supplanting. Such tests, written into program regulations or guidelines, simultaneously inform grantees of what is required and provide a framework for federal and state monitoring and enforcement efforts. The following proposed tests are modeled after tests developed long ago to implement the supplement, not supplant rules under ESEA Title I, but modified to fit program improvement grants in vocational education.[149]

The inter-year comparison test. A reduction in nonfederal support for improvement-related activities from one year to the next (especially when federal aid is new or has just been increased) may be taken as prima facie evidence that fiscal substitution has occurred. It is not conclusive evidence, as there may be valid reasons for the reduction in nonfederal support; but it is a strong enough indicator to warrant further inquiry by federal or state auditors. Applying this test may be difficult because program improvement expenses are unlikely to be identified separately in accounting records; however, figures on such things as outlays for curriculum development and teacher training may provide valuable clues.

The vocational-nonvocational comparison test. A second test for supplanting rests on comparisons of state and local support for particular program improvement activities within and outside of vocational education. Lower levels of nonfederal funding in the vocational sector may indicate that federal aid is paying for improvement activities in vocational education that are state-funded or locally funded in other areas of education. Suppose, for example, that an LEA provides two weeks of locally funded in-service training each year to high school teachers of academic subjects but uses Title IIB funds to finance similar training for teachers of vocational subjects. A reasonable inference is that both sets of teachers would have been trained at local expense in the absence of federal aid, and therefore that federal money has displaced nonfederal funds. The same would be true, of course, if levels of nonfederal support for curriculum development, evaluation, etc. were found to be lower in vocational than in nonvocational programs, with the difference made up with Title IIB funds.

The required-by-law test. A third test of supplanting hinges on the question of whether any activities funded with Title IIB grants are required by state law or policy (or by federal laws other than the Perkins Act). Any services required by such laws or policies would presumably be provided regardless of the availability of Title IIB funds, and so using Title IIB money to pay for them constitutes supplanting. For instance, if a state mandates a certain amount of in-service training for each teacher, it would be supplanting for an LEA to spend Title IIB funds to pay for that training for vocational education teachers.

The regular-operating-cost test. Assuming that Title IIB funds are to be used to develop, improve, or expand programs but not to operate them, it would be supplanting if such funds were expended to pay any of the routine operating costs of programs. Supplanting would be indicated, therefore, if the students enrolled in new, improved, or expanded programs were not receiving state-local funds equal to those they would have received if no improvement, innovation, or expansion efforts had taken place. The adequacy of the state-local contributions to program operating costs may be judged either by comparisons with costs incurred in the past (i.e., priori to program improvement) or by comparisons with the costs of unimproved but otherwise comparable programs.

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[149] For background on the criteria of supplanting used in ESEA Title I and, subsequently, in ECIA Chapter 1, see the discussion in Chapter 6 of nonsupplanting rules applicable to Perkins aid for handicapped and disadvantaged vocational students.

It would generally be more appropriate to apply these tests to broad program aggregates than to individual, occupation-specific programs. That is, one would compare a grantee's aggregate support for vocational program improvement in one year with the corresponding aggregate for the prior year, or with the same grantee's level of support for improvement of nonvocational programs, but one would not ask whether nonfederal support for improvement of, say, the building trades or agricultural production program was lower than it would have been in the absence of federal aid. Lacking an ability to read minds, one can not hope to determine what would have been expended on individual improvement activities. A Title IIB nonsupplanting rule, therefore, must be understood as a constraint applicable to funding of program improvement activities in the aggregate. It differs in this respect from the program-by-program excess cost rules applicable to federal aid for handicapped or disadvantaged students.

Option 6. Strengthen the Title IIB Matching Requirement. A matching requirement theoretically has the power to increase the additivity of federal aid, but the present Title IIB matching requirement is unlikely to have that effect. Its effectiveness is reduced, first, by the unrestrictive OVAE/ED definition of program improvement activities, which makes it possible for grantees to match (and overmatch) federal aid simply by calling some of their ordinary outlays matching funds, and second, by the interpretations that matching applies only statewide and to program improvement outlays in the aggregate. Retaining the 50-50 matching requirement under these conditions is pointless. It generates unproductive record-keeping and compliance-monitoring activity without contributing to program improvement. On the other hand, an appropriately modified matching requirement could have positive effects. The following are some potentially beneficial changes:

Require matching by each grantee, and count only state-local contributions to funding of specific federally aided activities. Statewide matching, as explained earlier, dilutes the effectiveness of the matching requirement by allowing the state to use the extra outlays ("overmatching") of one grantee to reduce or cancel out another grantee's matching obligation. Matching in the aggregate allows expenditures unrelated to the activities supported with federal funds to count as matching contributions. Switching from statewide matching to matching by individual recipients and from matching in the aggregate to matching of specific outlays would compel some grantees to devote extra funds of their own to federally assisted activities, thereby increasing the additivity of federal aid.

Requiring matching at the individual recipient level means that each local grantee would have to spend at least twice as much on qualifying innovation, improvement, or expansion activity as it receives in Title IIB aid. Under the present definitions of qualifying activity, this is an easy-to-satisfy requirement, and probably relatively few grantees would be affected. If the definitions were tightened as outlined earlier, however, it is likely that some grantees would have to channel additional funds of their own into program improvement activities. Thus, it is important that the change in the matching requirement be combined with the aforementioned changes in the definition of allowable costs.

Note that requiring recipient-by-recipient matching would not preclude states from providing the matching funds from state sources if they so chose. States could transmit state matching funds to each LEA or postsecondary institution along with federal Title IIB funds (see the next option below). Alternatively, they could develop joint state-local funding systems, perhaps designed to favor recipients with below-average fiscal capacity.

Require matching at the state level. An alternative to allowing state-level matching, as in the preceding option, is to require it. Each state, under this option, would have to provide state funds equal to the state's total Title IIB receipts and then distribute the combined funds (i.e., twice the amount of the state's Title IIB allotment) to individual grantees according to methods that conform to federal guidelines. Each local recipient would be deemed, for bookkeeping purposes, to have received a grant composed of 50 percent federal and 50 percent state funds, and those combined funds would have to be used according to the rules applicable to Title IIB assistance.

This approach has two important advantages. First, it is considerably more likely than the existing system to generate net increases in state-local support of program improvement activities. While it is true that some states could comply with such a requirement by attaching the program improvement label to existing state aid, that in itself would help to accomplish the federal purpose, provided that the relabeled funds were actually used for program improvement purposes. Second, requiring state-level matching could eliminate the disproportionate fiscal burdens sometimes imposed by the present matching requirement on local units of below-average wealth or fiscal capacity. While it is true that states can satisfy the present matching requirement in ways that are fiscally equitable, they are not required to do so; they may simply pass the obligation through to localities without regard to inter-local differences in ability to pay. With a state-level requirement, this potential source of fiscal inequity would be eliminated.

Options within the Existing Framework: Changes in the Fund Distribution Mechanism

The federal government, under the present Title IIB rules, exerts virtually no influence over the intrastate distributions of program improvement funds. This, according to several persons interviewed for this study, reflects an implicit quid pro quo arrangement, whereby Congress compensated states for constraints on the uses of Title IIB funds (i.e., earmarking them for program improvement) by relieving them of restrictions on fund distribution.[150] It also reflects the shortcomings of the pre-Perkins fund distribution arrangements, so amply documented in Benson and Hoachlander (1981). If the analyses in this chapter are correct, however, Congress may have overreacted and made a bad bargain. There are now neither controls over the intrastate distributions nor guarantees that federal funds will be spent for the intended purposes. Moreover, as explained earlier, the lack of control over Title IIB distributions allows states to nullify the federally specified formula distributions of funds for the handicapped and disadvantaged under Title IIA. There is reason, therefore, to consider alternatives to the present "hands off" policy regarding the intrastate distributions of Title IIB grants. The two main options offered below are to prescribe a federal fund distribution formula and to establish guidelines for state-administered distribution processes.

Option 7. Prescribe a Federal Fund Distribution Formula. The most clear-cut method of asserting, or reasserting, federal control over the intrastate distributions would be for Congress to specify a distribution formula by statute, just as it has done for the handicapped and disadvantaged in Sec. 203 of the Act. Such a formula could be used to ensure that certain federal distributional interests are served. There are inherent limitations, however, on what can be accomplished with a formula that must be applicable to every state, and it is important to recognize them when weighting the federal formula option against other alternatives.

Based on past experience with federal formulas and on considerations of data availability, it is likely that a federally prescribed intrastate distribution formula for Title IIB would (and could) be based mainly on (a) an indicator of the number of students to be served and (b) one or more economic indicators, such as the prevalence of low-income or poverty or whether the recipient is located in an economically distressed area. The former would allow a crude calibration of federal aid amounts to the demands for vocational education services, while the latter would represent the economic distress factor now cited in the Perkins Act, but apparently largely ignored in practice. Thus, at least two factors pertinent to an equitable distribution of aid could be taken into account.

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[150] Some observers also cite a different trade-off, in which the federal government compensates states for the relatively tight constraints attached to Perkins grants for the handicapped and disadvantaged by relieving them of virtually all constraints, including constraints on fund distribution, with respect to all other Perkins funds.

At the same time, it is clear that other factors pertinent to the distribution of program improvement funds can not be reflected in such a formula. One is the need of each eligible recipient to improve its programs (as indicated, e.g., by assessments of how up to date and effective a recipient's programs are). Another is the relative merit of each eligible recipient's proposals for new, improved, or expanded programs. Such things must be assessed subjectively, or judgmentally, which makes it difficult, if not impossible, to take them into account when apportioning funds by formula. It appears, therefore, that imposing a formula would preclude the practice, now engaged in by a substantial number of states, of distributing at least some Title IIB funds through merit-based competitive processes. Such processes are highly compatible with federal program improvement goals, so barring them would entail a significant loss. It appears, moreover, that even certain less-subjective factors would be difficult to accommodate in a single formula that had to be applicable to every state. The leading example is the fiscal capacity factor, which many think should be included in a formula to compensate for differences in ability to pay. The problem is that there are major variations among states in how local fiscal capacities, or tax bases, are measured, which means that it would be impossible for the federal government to prescribe a single variable for which every state has data. Thus, despite wide agreement that such a factor is relevant, it might be infeasible to include it in a federal formula.

Imposing a federal formula, in sum, is not an ideal solution. It would ensure that certain federal distributional criteria are satisfied--which is certainly not the case under the present laissez faire system. At the same time, it would interfere with taking into account other legitimate and important factors, including qualitative factors directly relevant to program improvement, which at least some states might consider if left to their own devices. The trade-off is between advancing basic criteria of distributional equity via a formula and leaving scope for pertinent improvement-related factors to influence the distributions.

But despite the aforementioned limitations, one important thing that would be accomplished by prescribing a formula is that states would no longer be able to distribute Perkins Title IIB funds in a manner that takes into account and offsets the prescribed distributions of Perkins funds for the handicapped and disadvantaged under Title IIA. This is an important point, even though it has nothing to do with program improvement goals or with the Title IIB program itself. As matters stand now, federal Title IIB funds have become the instrument whereby states can nullify distributions of federal target-group funds that are not to their liking. Controlling the distribution of Title IIB money is one way of preventing this undesirable result.

Option 8. Establish Guidelines for State-Administered Distribution Processes. Short of prescribing a distribution formula, there are a number of less intrusive things that Congress could do to protect federal interests in the intrastate distributions of Title IIB funds. These include establishing specifications for state-designed formulas, setting up guidelines for non-formula distribution processes, and imposing various kinds of constraints on the distributional outcomes.

Require states to design their own intrastate distributional formulas, subject to federal specifications or guidelines. This strategy is in disrepute because it was used unsuccessfully under the pre-Perkins legislation (the Education Amendments of 1976). As Benson and Hoachlander (1981) have shown, the guidelines under the 1976 Act were vague, nonquantitative, too numerous, and in some instances mutually contradictory, and they allowed states to offset one Congressionally established guideline with another and to distribute aid more or less as they chose. The failure may have been one of execution rather than of concept, however; if so, excluding the option from consideration is unwise.

The main attraction of having each state design its own formula, subject to federal criteria and constraints, is that state formulas can reflect factors that cannot be incorporated into a nationally uniform formula because of data limitations. The fiscal capacity factor is a prime example. Nearly every state uses some type of capacity indicator to distribute general-purpose state aid to local school districts. The same indicators could be used in formulas for distributing Perkins Title IIB funds (or, for that matter, all Perkins funds). This could only be done, however, if each state were free to use its own capacity measure. Moreover, since the need for fiscal equalization varies among states (depending on, among other things, the degree of reliance on local revenue to support schools), it would also be appropriate to allow the influence of the capacity factor to vary among states. This implies multiple, state-specific formulas rather than a uniform federal formula that applies to every state.

It would be essential, if this option were pursued, to avoid the mistakes made by Congress under the Education Amendments of 1976. Merely stipulating that states must "take into account" or "give priority to" particular factors is insufficient. The federal specifications must include the manner in which each specified factor is to be taken into account and/or the weight it is to be given. For instance, a general stipulation that economically distressed areas should be favored is meaningless without further elaboration; but a requirement that each economically distressed locality should receive at least 25 percent more aid per student than a comparable nondistressed area or that the economic distress factor should be assigned at least a 30 percent weight in the formula would have real effects on distributional outcomes. The key is quantitative specificity with respect to how factors of interest to Congress are to be incorporated into state-designed formulas.

Require states to use non-formula allocation procedures of federally specified type. That judgments about the quality of existing vocational programs and the merits of proposed improvements cannot readily be incorporated into formulas is reason enough to consider alternatives to formula-based fund allocation methods. The question is, how can Congress ensure that federal priorities are taken into account without insisting on overly rigid formula mechanisms? One possible answer is to specify certain characteristics of nonformula procedures for states to use in selecting grantees and apportioning Title IIB funds.

A particular possibility along this line is for the federal government to require states to apportion Title IIB funds through competitive processes, in which applicants' proposals are rated according to the merit of the proposed improvements, need for assistance, and other specified criteria. According to Swartz (1989), many states already rely on such competitive processes to distribute some or all of their Title IIB funds. But in the absence of federal specifications, these procedures do not necessarily give adequate weight--or any weight--to criteria of special federal interest. Nothing requires a state, for example, to take into account either local financial conditions or the level of development of local vocational programs when it evaluates proposals for program improvement, much less to weigh factors like local economic distress along with the merits of the proposed activities. Establishing such requirements is therefore an option worth considering.

The characteristics of a competitive distribution process that federal guidelines might address include rating criteria, weights, and rating procedures. The guidelines might specify, for example, that proposals be rated according to the assessed quality of the proposed activity, the urgency of improving the applicant's programs, and the severity of local economic distress, with certain weights or ranges of weights to be assigned to each of the three factors. They might further specify that the funding levels of approved activities should depend inversely on the applicant's fiscal capacity. Such procedural aspects as the make-up of proposal evaluation panels and the mechanics of rating processes might also be covered.

The presence of these kinds of guidelines obviously would not guarantee optimal outcomes. Judgmental rating processes are always subject to manipulation and politicization. Nevertheless, such guidelines would make it more likely than it is now that fund distributions will be fair, efficient, and compatible with Congressional goals for Title IIB.

Impose federal constraints on distributional outcomes. An alternative to either prescribing or guiding state distributional processes is to let states use whatever fund distribution methods they like but to impose constraints on the results. One such constraint already appears in the Act--namely, the stipulation in Sec. 113(b)(5) that each state shall allocate more Perkins funds, in the aggregate, to recipients in economically distressed or high-unemployment areas than to recipients outside such areas. This is only a crude example, however, of the type of constraint that could be imposed to protect certain federal interests, without dictating in detail what methods states should use to apportion their Title IIB funds.

An appropriately designed constraint could be used, for example, to carry out the Congressional intent, expressed in Secs. 251(a)(2) and 251(a)(3) of the Act, that Title IIB funds should be allocated so as to favor "economically depressed urban and rural areas." Each state could be required to distribute to its economically depressed areas a share of Title IIB funds equal at least to a specified multiple of those areas' share of the state's population or the state's vocational enrollment.[151] Similar provisions could be used to favor or protect other classes of recipients, such as districts with low wealth, low fiscal capacity, or high concentrations of low-income or minority vocational enrollees.

Another potential use of constraints is to control the division of each state's Title IIB funds between local education agencies and postsecondary institutions. Immediately prior to the Perkins Act, at least 15 percent of each state's allotment of federal vocational education aid was set aside for postsecondary students (P.L. 94-482, Sec. 110(c)). However, this fixed percentage requirement was difficult to defend, since the actual postsecondary share of vocational enrollment varies from one state to another. Currently, there are no limits on the postsecondary share under the Perkins Act. If it were thought desirable to reimpose them, a more appropriate way of doing it than to specify a flat percentage would be to link the limits to the actual postsecondary share of enrollment in each state. The postsecondary share of Title IIB money might be limited, for example, to 120 percent of the postsecondary percentage of vocational enrollment in each state.

A very different type of distributional constraint might be used to alleviate the problem, discussed at length earlier, of states' distributing Title IIB funds so as to offset the Congressionally prescribed allocations of Perkins funds for the handicapped and disadvantaged. To deal with an analogous problem under the federal compensatory education program (ESEA Title I), Congress formulated a "nonpenalization" rule whereby, in essence, states were barred from reducing state aid payments to LEAs on account of their receipts of federal Title I funds. A similar constraint, applied to Title IIB, would bar a state from penalizing recipients in the distribution of Title IIB funds on the basis of their formula-based allotments of funds for special-need students under Title IIA. Such a constraint, adequately enforced, might make it unnecessary to impose stronger federal controls (i.e., a Congressionally prescribed Title IIB formula) to prevent Title IIB funds from offsetting the distributions of aid for handicapped and disadvantaged students.

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[151] For example, if 20 percent of the vocational education enrollment in a state were in economically depressed areas and the multiple were set at 1.25, the state would be required to expend at least 25 percent of its Title IIB funds (i.e., 20 x 1.25) in the depressed areas. To make such a requirement meaningful, it would be necessary for the federal government to provide a precise definition of depressed area, not to leave that definition to the states as it does under the present Act.

More Radical Changes in Program Design

Although some of the options discussed above may seem drastic, they all fall within the framework of the present Perkins Act in that (a) federal funds would still be widely dispersed among LEAs and postsecondary institutions, (b) federal funds would be expended for activities that state or local officials select, and (c) funding would be for particular activities or uses but not linked to educational or economic outcomes. The two options presented below depart from this model. Under the first, a *vocational education research and development* initiative, federal program improvement funds would be concentrated on a relatively small number of organized research, development, experimentation, or evaluation projects designed to yield major, generalizable improvements in practice. Under the second, a *performance-based incentive* strategy, the concept of directing federal funds to particular program improvement activities would be abandoned in favor of rewarding service providers for success in raising program quality or attaining specified levels of performance. Either approach would constitute a basic change in federal strategy rather than a mere technical improvement in the present Act.

Federal Funding of Organized Research, Development, Experimentation, and Evaluation Efforts. A shortcoming of the present Title IIB program that some observers consider more fundamental than any of the specific design flaws discussed above is that the present grants do little to advance the state of the art or to generate new knowledge of what works in vocational education. Much of what Title IIB money now buys contributes in only the most marginal and mundane sense to program improvement. A dominant share is expended for equipment. Other significant shares are expended for such things as teacher training, supplies, and expansion of existing programs. Even if these outlays were fiscally additive rather than substitutive, they would do little to bring about fundamental change. Moreover, Title IIB money is now dispersed so widely and in such small packets that grants are generally too small to support systematic knowledge-creation activities, such as experiments, comparative evaluations, or organized program design efforts.[152] If advancing the state of the art is the goal, Title IIB-type grants are not the appropriate instruments.

A radical policy option, oriented toward fundamental reform and qualitative upgrading of vocational education, is to replace the Perkins Title IIB grants, either wholly or in part, with grants for selected, relatively large-scale research, development, experimentation, and evaluation efforts. These grants, in sharp contrast with the present ones, would be for specific projects, chosen for their potential to yield substantial, generalizable improvements in vocational education practice. Such projects, chosen competitively, would be of sufficient scale and sophistication to make systematic contributions to the knowledge base underlying the vocational education enterprise. Projects would not be confined to individual LEAs or postsecondary vocational institutions, as under Title IIB, but would typically involve multi-site efforts and inter-site comparisons. The eligible grantees could include research organizations and institutions of higher education, as well as the Title IIB eligible recipients, and combinations and consortia thereof. Most important, the orientation would be toward long-term improvements of a general nature rather than toward the short-term, marginal improvements (such as equipment modernization) emphasized under Title IIB.

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[152] The median Title IIB grants are about $22,000, $29,000, and $64,000, respectively, for LEAs, area vocational schools, and postsecondary institutions, respectively, according to NAVE survey findings reported in Swartz (1989).

The shift to a research and development orientation would imply a very different pattern of federal funding from that under the present Title IIB. Individual projects would be relatively large, and multiyear support would be necessary. A typical project might involve the development of a new approach, or a set of alternative approaches, to training students for one or more occupations; the implementation of the new approaches in multiple locations, selected to represent different clientele and different environments; a comparative evaluation of the results; and appropriate dissemination activities. Such projects would be relatively costly, and their number would necessarily be small. The number of grants at any given time would probably be in the low hundreds, as compared with the thousands of local grants funded under the present program.

The recipients of these R&D grants would be selected competitively. Relevant selection criteria would include the quality and likelihood of success of the proposed projects and the potential educational and economic benefits of the proposed innovations or improvements in vocational programs. Review panels would have to be constituted to evaluate and rate proposals. Panel membership might appropriately include vocational educators, researchers and evaluators, and representatives of employers and unions. It might be appropriate to separate assessments of technical quality and labor-market potential, letting those with the appropriate expertise address these different dimensions of merit. These and many other aspects of the selection process would have to be carefully designed.

The responsibility for administering these R&D grants could be centralized in the U.S. Department of Education, decentralized to the states, or perhaps divided between the federal and state levels. There are precedents and prototypes for each approach. The federal government makes direct, multiyear project grants to LEAs under the Bilingual Education Act, formerly made them under the Emergency School Aid Act (assistance for desegregation under ESEA Title VI), and, of course, administers directly many research, development, and evaluation programs. A directly applicable model of a state-administered federal grant program is the program for "improvement in local educational practice" formerly funded under Part C of ESEA Title IV. If the program were decentralized, funds would presumably be apportioned among states by formula and the project selection process would be conducted separately by each state. If it were centralized, projects could be selected without regard to the distribution among states or, if necessary, selections could be made subject to constraints on the interstate allocation of funds.[153]

Clearly, there are many possible variations of this policy option. The key point, however, is the change in philosophy that this alternative represents: an emphasis on knowledge creation, improvement in the state of the art, and general reform in vocational education, as opposed to the marginal and piecemeal improvements that are the best one can hope for under even an upgraded Title IIB program.

Federal Funding of Performance-Based Incentive Grants. The existing Title IIB program and all the previously discussed options reflect a federal strategy of attempting to improve vocational education by making resources available for certain types of program improvement activities. A fundamentally different approach is to forget about resource inputs and focus instead on results. Improvement may best be stimulated, some believe, by offering program providers financial rewards for good educational and/or economic performance. An option based on this belief is to shift funds from the present Title IIB program into performance-based incentive grants.

Performance-based funding schemes for vocational education have received some attention in the education policy literature. Hoachlander, Choy, and Lareau (1985) present a proposal in which federal program improvement funds would be allocated among recipients according to numbers of certified program "completers" (defined as students who, at program completion, have demonstrated attainment of basic employability skills). More generally, a set of papers recently commissioned by NAVE (to be published) examines the issues raised by proposals for performance-based funding. It is evident from what has been written that many obstacles would have to be surmounted to develop a performance-based system, but these are not so clearly insuperable as to rule the strategy out of consideration.

A prerequisite for rewarding performance is measuring performance. The issues of performance measurement in vocational education are too complex to deal with here, but a few key points deserve mention. Potential performance indicators are basically of two types: measures of educational outcomes, such as the levels of knowledge and skills acquired by students, and measures of economic outcomes, such as rates of job placement and earnings of program graduates. There are problems with using either type of indicator as the basis for performance-contingent rewards. Knowledge and skill levels are measurable, but the measures are occupation-specific and hence not comparable across fields. Moreover, a program's success in producing gains in skills is not necessarily indicative of the value of those skills in the labor market. Economic outcomes are more closely related to the purposes of vocational education, but it is difficult to distinguish the variations in economic outcomes attributable to differences in program performance from those attributable to labor market conditions and other economic factors. Consequently, it is questionable whether vocational educators can validly be held accountable for their students' economic success. It may be possible to resolve or circumvent these problems, but a substantial development effort would be required. Because of measurement problems alone, the performance-incentive option cannot be implemented immediately.

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[153] It should be noted, however, that not all projects would be clearly identified with particular states, both because multisite projects might involve sites in several states and because proposals might be submitted by interstate consortia of institutions.

Apart from measurement issues, many other issues would have to be resolved before a performance-based system could be considered for practical implementation. One is whether rewards should flow to those whose performance is high or to those whose performance has improved. The two approaches create different incentive effects and have different distributional implications. An even more basic question is whether incentive grants would be awarded to successful school systems and institutions, to specific high-performing programs, or to the particular vocational educators whose students have done well (perhaps as salary increments or bonuses). Rewarding institutions and programs makes more sense if the objective is to shift resources toward more successful service providers, but rewarding individuals is more appropriate if the purpose is to stimulate higher-quality vocational instruction. Other important design issues concern the trade-off between numbers and sizes of rewards, the performance thresholds required to earn performance-based funding, and the duration of such funding once it has been provided. Given the number and complexity of the issues, structuring a performance-based funding system would be a major exercise in program design, and considerable experimentation and evaluation would undoubtedly be required.

But one should not lose sight amidst all the complexities of the policy significance of performance-based incentives. Any Title IIB-type program that stands a chance of succeeding is likely to be highly targeted, administratively complex, and accompanied by rules, standards, and constraints uncongenial to state and local officials. To ensure that federal funds are actually used to improve programs, the federal government would have to prescribe and control local uses of funds much more tightly than under the present Act. Much of this unwelcome (and perhaps futile) federal involvement could be avoided by shifting from funding of program improvement efforts to rewards for actual program improvement. An output-oriented, performance-based federal strategy would be prescriptive only with respect to performance measurement and accountability. Decisions about funding, resource use, and the design, implementation, and operation of vocational programs would remain in state or local hands. The prospect seems sufficiently attractive to merit serious exploration, despite the admitted difficulties of developing a practical performance-based system.

Overview of Policy Options

Broadly speaking, there are three ways for policymakers to respond to the shortcomings of Perkins Title IIB. One is to do nothing, leaving Title IIB as essentially an unrestricted block grant, even though it is nominally a program for improvement, innovation, and expansion. The second is to work within the existing Perkins framework to make the program more effective. This entails tightening, strengthening, and augmenting its resource allocation provisions and modifying its fund distribution rules. The third is to retain the program improvement goal but to abandon the Title IIB strategy in favor of alternative, potentially more effective methods of upgrading vocational education.

Within the present Perkins framework, there are numerous options for increasing the additivity of Title IIB grants (the rate at which federal dollars translate into program improvement activities that would not otherwise have been undertaken). Of these, the most important is to tighten the definitions of outlays chargeable to Title IIB, making clear that federal funds may pay only for the incremental costs of upgrading or expanding programs and not for any ordinary costs of program operation. Other potentially beneficial definitional changes include clarifying and narrowing the list of permitted uses of Title IIB funds, delimiting federally fundable program expansion activities, and restricting federal support for equipment purchases. The last-mentioned item is important not only to focus resources on program improvement but also to counter the strong bias in favor of equipment outlays built into the present Title IIB program.

Other options that could contribute to improved targeting of federal aid (in conjunction with the aforementioned definitional changes) include implementing the existing but currently inoperative supplement, not supplant rule and strengthening the Title IIB matching requirement. The former entails defining prohibited supplanting and writing operational tests of supplanting into the regulations. The latter could take the forms of requiring separate matching by each recipient, counting as matching contributions only state-local outlays for specific federally funded activities, requiring matching at the state level, and altering or making variable the present fixed 50-50 matching rate.

There are also several options for protecting federal interests in the intrastate distribution of funds. The possibilities include prescribing an intrastate distribution formula, establishing specifications or guidelines for state-designed formulas or state-administered nonformula distribution processes, and imposing certain constraints on distributional outcomes. These options would serve, in varying degrees, to promote distributional equity, to assert federal priorities, and--a matter of special concern--to prevent states from using Title IIB funds to offset the federally prescribed distributions of Perkins funds for the handicapped and disadvantaged.

Outside the Perkins framework, there are at least two strategies of a more radical nature that the federal government could adopt to upgrade the quality of vocational education programs. One, the R&D strategy, would emphasize knowledge creation and generalizable, fundamental, long-term reform of vocational education practice. Concretely, this means that federal program improvement funds would be concentrated on organized, competitively selected, relatively large-scale research, development, experimentation, and evaluation efforts and would no longer be widely dispersed or available for routine program improvements. The other, the performance incentive approach, would alter the federal role even more drastically. Title IIB grants would be replaced by performance-based incentive grants, distributed on the basis of educational and/or economic outcomes of vocational education programs. The federal government would concern itself with results rather than means; with rewarding improvement rather than channeling resources to particular program improvement activities.

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